

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1229**

Citations Affected: IC 4-4-3-8; IC 4-4-3-23; IC 4-6-12; IC 23-2-5-3; IC 23-2-5-19; IC 23-15-8-3; IC 24-4.5-1-102; IC 24-4.5-1-202; IC 24-4.5-7; IC 24-9; IC 28-1-20-4; IC 28-7-1-9; IC 28-7-1-9.2; IC 28-8-4-27; IC 28-8-4-33; IC 28-10-1-1; IC 28-11-3-6; IC 28-13-16-4; IC 28-13-16-5; IC 28-15-2-2; IC 32-29-1-2.5; IC 34-7-4-2; IC 36-2-7-10; IC 24-4.5-7-407; IC 24-4.5-7-408.

Synopsis: Home loan practices. Restricts certain lending acts and practices. Establishes the homeowner protection unit in the office of the attorney general. Provides enforcement procedures for deceptive mortgage acts. Establishes a \$3 mortgage recording fee. Requires the department of commerce to provide home ownership education programs. Provides that certain provisions do not apply to certain financial institutions. Makes changes to the definition of a high cost home loan. Prohibits certain lending practices. Updates references in financial institutions law to conform with federal law. Permits a state chartered financial institution to engage in activities related to a product, a service, or an investment that is available to or offered by national banks domiciled in Indiana. Removes limitations on the amount of public funds that may be deposited in a credit union. (Currently, deposits of public funds are limited to 10% of total credit union assets.) Increases the minimum amount of the bond required for a money transmitter from \$100,000 to \$200,000 and the maximum amount from \$200,000 to \$300,000. Increases the insurance coverage required for a money transmitter for criminal or dishonest acts from 50% to 100% of the amount of the money transmitter's security bond or deposit. Provides that state law applies to a state chartered bank, trust company, savings association, savings bank, credit union, corporate fiduciary, or industrial loan and investment company to the same extent it applies to a federally chartered institution of the same type. Establishes administrative procedures governing requests for an exemption from state law due to the preemption of state law as it is applied to federally chartered institutions. Makes various changes in the small loan provisions of the Uniform Consumer Credit Code, including: (1) defines a small loan as a loan with a principal amount that is more than \$50 and not more than \$500; (2) prohibits the renewal of a small loan; (3) removes limitations on finance charges; (4) increases delinquency charges; (5) allows a small loan to be secured by a borrower's authorization to debit an account instead of a borrower's check; (6) increases civil penalties and statutory damages from \$1,000 to \$2,000; and (7) prohibits a small loan if the total payable amount of the small loan exceeds 15% of the borrower's monthly gross income. (Current law provides that a small loan is prohibited if it exceeds 20% of the borrower's

monthly net income.) Repeals provisions that relate to the renewal of a small loan. Permits the secretary of state to administratively dissolve a business entity whose name contains the term "banc" or "banco" in violation of financial institutions law. (Current law allows the secretary of state to take this action in the case of an entity whose name contains the term "bank".) Permits the use of the word "bank", "banc", or "banco" in the name of a subsidiary of : (1) a bank or trust company; and (2) a bank holding company. Prohibits a lender from requiring a borrower to obtain hazard insurance in an amount exceeding the replacement value of the improvements on mortgaged property as a condition of receiving or maintaining the mortgage. 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. 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. 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. Exempts persons engaged in certain federally regulated transactions from the requirements of the loan broker law. **(This conference committee report: requires the department of commerce, rather than the Indiana housing finance authority, to provide home ownership education programs; and incorporates the provisions of SB 222, ESB 405, ESB 406, ESB 469, and some provisions of HB 1230.)**

Effective: Upon passage; January 1, 2004 (retroactive); July 1, 2004; January 1, 2005.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1229 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-4-3-8 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JANUARY 1, 2005]: Sec. 8. (a) The department shall
- 4 develop and promote programs designed to make the best use of the
- 5 resources of the state so as to assure a balanced economy and
- 6 continuing economic growth for Indiana and for those purposes may
- 7 do the following:
- 8 (1) Cooperate with federal, state, and local governments and
- 9 agencies in the coordination of programs to make the best use of
- 10 the resources of the state.
- 11 (2) Receive and expend all funds, grants, gifts, and contributions
- 12 of money, property, labor, interest accrued from loans made by the
- 13 department, and other things of value from public and private
- 14 sources, including grants from agencies and instrumentalities of the
- 15 state and the federal government. The department:
- 16 (A) may accept federal grants for providing planning assistance,
- 17 making grants, or providing other services or functions
- 18 necessary to political subdivisions, planning commissions, or
- 19 other public or private organizations;
- 20 (B) shall administer these grants in accordance with their terms;

- 1 and
2 (C) may contract with political subdivisions, planning
3 commissions, or other public or private organizations to carry out
4 the purposes for which the grants were made.
- 5 (3) Direct that assistance, information, and advice regarding the
6 duties and functions of the department be given the department by
7 any officer, agent, or employee of the state. The head of any other
8 state department or agency may assign one (1) or more of the
9 department's or agency's employees to the department on a
10 temporary basis, or may direct any division or agency under the
11 department's or agency's supervision and control to make any
12 special study or survey requested by the director.
- 13 (b) The department shall perform the following duties:
- 14 (1) Disseminate information concerning the industrial, commercial,
15 governmental, educational, cultural, recreational, agricultural, and
16 other advantages of Indiana.
- 17 (2) Plan, direct, and conduct research activities.
- 18 (3) Develop and implement industrial development programs to
19 encourage expansion of existing industrial, commercial, and
20 business facilities within Indiana and to encourage new industrial,
21 commercial, and business locations within Indiana.
- 22 (4) Assist businesses and industries in acquiring, improving, and
23 developing overseas markets and encourage international plant
24 locations within Indiana. The director, with the approval of the
25 governor, may establish foreign offices to assist in this function.
- 26 (5) Promote the growth of minority business enterprises by doing
27 the following:
- 28 (A) Mobilizing and coordinating the activities, resources, and
29 efforts of governmental and private agencies, businesses, trade
30 associations, institutions, and individuals.
- 31 (B) Assisting minority businesses in obtaining governmental or
32 commercial financing for expansion, establishment of new
33 businesses, or individual development projects.
- 34 (C) Aiding minority businesses in procuring contracts from
35 governmental or private sources, or both.
- 36 (D) Providing technical, managerial, and counseling assistance to
37 minority business enterprises.
- 38 (6) Assist in community economic development planning and the
39 implementation of programs designed to further this development.
- 40 (7) Assist in the development and promotion of Indiana's tourist
41 resources, facilities, attractions, and activities.
- 42 (8) Assist in the promotion and marketing of Indiana's agricultural
43 products, and provide staff assistance to the director in fulfilling the
44 director's responsibilities as commissioner of agriculture.
- 45 (9) Perform the following energy related functions:
- 46 (A) Assist in the development and promotion of alternative energy
47 resources, including Indiana coal, oil shale, hydropower, solar,
48 wind, geothermal, and biomass resources.
- 49 (B) Encourage the conservation and efficient use of energy,
50 including energy use in commercial, industrial, residential,

- 1 governmental, agricultural, transportation, recreational, and
2 educational sectors.
- 3 (C) Assist in energy emergency preparedness.
- 4 (D) Not later than January 1, 1994, establish:
- 5 (i) specific goals for increased energy efficiency in the
6 operations of state government and for the use of alternative
7 fuels in vehicles owned by the state; and
- 8 (ii) guidelines for achieving the goals established under item (i).
- 9 (E) Establish procedures for state agencies to use in reporting to
10 the department on energy issues.
- 11 (F) Carry out studies, research projects, and other activities
12 required to:
- 13 (i) assess the nature and extent of energy resources required to
14 meet the needs of the state, including coal and other fossil
15 fuels, alcohol fuels produced from agricultural and forest
16 products and resources, renewable energy, and other energy
17 resources;
- 18 (ii) promote cooperation among government, utilities, industry,
19 institutions of higher education, consumers, and all other
20 parties interested in energy and recycling market development
21 issues; and
- 22 (iii) promote the dissemination of information concerning
23 energy and recycling market development issues.
- 24 (10) Implement any federal program delegated to the state to
25 effectuate the purposes of this chapter.
- 26 (11) Promote the growth of small businesses by doing the
27 following:
- 28 (A) Assisting small businesses in obtaining and preparing the
29 permits required to conduct business in Indiana.
- 30 (B) Serving as a liaison between small businesses and state
31 agencies.
- 32 (C) Providing information concerning business assistance
33 programs available through government agencies and private
34 sources.
- 35 (12) Assist the Indiana commission for agriculture and rural
36 development in performing its functions under IC 4-4-22.
- 37 (13) Develop and promote markets for the following recyclable
38 items:
- 39 (A) Aluminum containers.
- 40 (B) Corrugated paper.
- 41 (C) Glass containers.
- 42 (D) Magazines.
- 43 (E) Steel containers.
- 44 (F) Newspapers.
- 45 (G) Office waste paper.
- 46 (H) Plastic containers.
- 47 (I) Foam polystyrene packaging.
- 48 (J) Containers for carbonated or malt beverages that are primarily
49 made of a combination of steel and aluminum.
- 50 (14) Produce an annual recycled products guide and at least one (1)

1 time each year distribute the guide to the following:

- 2 (A) State agencies.
- 3 (B) The judicial department of state government.
- 4 (C) The legislative department of state government.
- 5 (D) State educational institutions (as defined in IC 20-12-0.5-1).
- 6 (E) Political subdivisions (as defined in IC 36-1-2-13).
- 7 (F) Bodies corporate and politic created by statute.

8 A recycled products guide distributed under this subdivision must
9 include a description of supplies and other products that contain
10 recycled material and information concerning the availability of the
11 supplies and products.

12 **(15) Beginning July 1, 2005, the department shall identify,**
13 **promote, assist, and fund home ownership education programs**
14 **conducted throughout Indiana by nonprofit counseling**
15 **agencies certified by the department using funds appropriated**
16 **under IC 4-4-3-23(e). The department shall adopt rules under**
17 **IC 4-22-2 governing certification procedures and counseling**
18 **requirements for nonprofit home ownership counselors. The**
19 **attorney general and the entities listed in IC 4-6-12-4(a)(1)**
20 **through IC 4-6-12-4(a)(10) shall cooperate with the**
21 **department in implementing this subdivision.**

22 (c) The department shall submit a report to the general assembly
23 before October 1 of each year concerning the availability of and location
24 of markets for recycled products in Indiana. The report must include
25 the following:

26 (1) A priority listing of recyclable materials to be targeted for
27 market development. The listing must be based on an examination
28 of the need and opportunities for the marketing of the following:

- 29 (A) Paper.
- 30 (B) Glass.
- 31 (C) Aluminum containers.
- 32 (D) Steel containers.
- 33 (E) Bi-metal containers.
- 34 (F) Glass containers.
- 35 (G) Plastic containers.
- 36 (H) Landscape waste.
- 37 (I) Construction materials.
- 38 (J) Waste oil.
- 39 (K) Waste tires.
- 40 (L) Coal combustion wastes.
- 41 (M) Other materials.

42 (2) A presentation of a market development strategy that:

- 43 (A) considers the specific material marketing needs of Indiana;
- 44 and
- 45 (B) makes recommendations for legislative action.

46 (3) An analysis that examines the cost and effectiveness of future
47 market development options.

48 SECTION 2. IC 4-4-3-23 IS ADDED TO THE INDIANA CODE AS
49 A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY

1 1, 2005]: **Sec. 23. (a) The home ownership education account**
 2 **within the state general fund is established to support the home**
 3 **ownership education programs established under section 8(b)(15)**
 4 **of this chapter. The account is administered by the department.**

5 **(b) The home ownership education account consists of fees**
 6 **collected under IC 24-9-9.**

7 **(c) The expenses of administering the home ownership education**
 8 **account shall be paid from money in the fund.**

9 **(d) The treasurer of state shall invest the money in the home**
 10 **ownership education account not currently needed to meet the**
 11 **obligations of the account in the same manner as other public**
 12 **money may be invested.**

13 **(e) Money in the account may be spent only after appropriation**
 14 **by the general assembly.**

15 SECTION 3. IC 4-6-3-3, AS AMENDED BY P.L.2-2002, SECTION
 16 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY
 17 1, 2005]: Sec. 3. If the attorney general has reasonable cause to believe
 18 that a person may be in possession, custody, or control of documentary
 19 material, or may have knowledge of a fact that is relevant to an
 20 investigation conducted to determine if a person is or has been engaged
 21 in a violation of IC 4-6-9, IC 4-6-10, IC 13-14-10, IC 13-14-12,
 22 IC 13-24-2, IC 13-30-4, IC 13-30-5, IC 13-30-6, IC 13-30-8,
 23 IC 23-7-8, IC 24-1-2, IC 24-5-0.5, IC 24-5-7, IC 24-5-8, **IC 24-9,**
 24 **IC 25-1-7, IC 32-34-1,** or any other statute enforced by the attorney
 25 general, only the attorney general may issue in writing, and cause to be
 26 served upon the person or the person's representative or agent, an
 27 investigative demand that requires that the person served do any
 28 combination of the following:

29 (1) Produce the documentary material for inspection and copying
 30 or reproduction.

31 (2) Answer under oath and in writing written interrogatories.

32 (3) Appear and testify under oath before the attorney general or the
 33 attorney general's duly authorized representative.

34 SECTION 4. IC 4-6-12 IS ADDED TO THE INDIANA CODE AS
 35 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JANUARY
 36 1, 2005]:

37 **Chapter 12. Homeowner Protection Unit**

38 **Sec. 1. As used in this chapter, "unit" refers to the homeowner**
 39 **protection unit established under this chapter.**

40 **Sec. 2. The attorney general shall establish a homeowner**
 41 **protection unit to enforce IC 24-9 and to carry out this chapter.**

42 **Sec. 3. (a) Beginning July 1, 2005, the unit shall do the**
 43 **following:**

44 (1) Investigate deceptive acts in connection with mortgage
 45 lending.

46 (2) Investigate violations of IC 24-9.

47 (3) Institute appropriate administrative and civil actions to
 48 redress:

- 1 (A) deceptive acts in connection with mortgage lending; and
 2 (B) violations of IC 24-5-0.5 and IC 24-9.
 3 (4) Cooperate with federal, state, and local law enforcement
 4 agencies in the investigation of:
 5 (A) deceptive acts in connection with mortgage lending;
 6 (B) criminal violations involving deceptive acts in connection
 7 with mortgage lending; and
 8 (C) violations of IC 24-5-0.5 and IC 24-9.
 9 (b) The attorney general shall adopt rules under IC 4-22-2 to the
 10 extent necessary to organize the unit.

11 Sec. 4. (a) The following may cooperate with the unit to
 12 implement this chapter:

- 13 (1) The Indiana professional licensing agency and the
 14 appropriate licensing boards with respect to persons licensed
 15 under IC 25.
 16 (2) The department of financial institutions.
 17 (3) The department of insurance with respect to the sale of
 18 insurance in connection with mortgage lending.
 19 (4) The securities division of the office of the secretary of
 20 state.
 21 (5) The supreme court disciplinary commission with respect to
 22 attorney misconduct.
 23 (6) The Indiana housing finance authority.
 24 (7) The department of state revenue.
 25 (8) The state police department.
 26 (9) A prosecuting attorney.
 27 (10) Local law enforcement agencies.
 28 (11) The department of commerce.

29 (b) Notwithstanding IC 5-14-3, the entities listed in subsection
 30 (a) may share information with the unit.

31 Sec. 5. The attorney general may file complaints with any of the
 32 entities listed in section 4 of this chapter to carry out this chapter
 33 and IC 24-9.

34 Sec. 6. The establishment of the unit and the unit's powers does
 35 not limit the jurisdiction of an entity described in section 4 of this
 36 chapter.

37 Sec. 7. The attorney general and an investigator of the unit may
 38 do any of the following when conducting an investigation under
 39 section 3 of this chapter:

- 40 (1) Issue and serve a subpoena for the production of records,
 41 including records stored in electronic data processing systems,
 42 for inspection by the attorney general or the investigator.
 43 (2) Issue and serve a subpoena for the appearance of a person
 44 to provide testimony under oath.
 45 (3) Apply to a court with jurisdiction to enforce a subpoena
 46 described in subdivision (1) or (2).

47 Sec. 8. The unit shall cooperate with the department of

1 commerce in the development and implementation of the home
 2 ownership education programs established under
 3 IC 4-4-3-8(b)(15).

4 **Sec. 9. (a) The homeowner protection unit account within the**
 5 **general fund is established to support the operations of the unit.**
 6 **The account is administered by the attorney general.**

7 **(b) The homeowner protection unit account consists of fees**
 8 **collected under IC 24-9-9.**

9 **(c) The expenses of administering the homeowner protection**
 10 **unit account shall be paid from money in the account.**

11 **(d) The treasurer of state shall invest the money in the**
 12 **homeowner protection unit account not currently needed to meet**
 13 **the obligations of the account in the same manner as other public**
 14 **money may be invested.**

15 **(e) Before July 1, 2007:**

16 **(1) money in the homeowner protection unit account at the**
 17 **end of the state fiscal year does not revert to the state general**
 18 **fund; and**

19 **(2) there is annually appropriated to the attorney general**
 20 **from the homeowner protection unit account money sufficient**
 21 **for carrying out the purposes of this chapter and IC 24-9.**

22 **(f) After June 30, 2007:**

23 **(1) money in the homeowner protection unit account at the**
 24 **end of a state fiscal year reverts to the state general fund;**
 25 **and**

26 **(2) money in the homeowner protection unit account may only**
 27 **be spent after appropriation by the general assembly.**

28 SECTION 5. IC 23-2-1-2 IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The following securities are
 30 exempted from the registration requirements of section 3 of this
 31 chapter:

32 (1) A security (including a revenue obligation) issued or guaranteed
 33 by the United States, a state, a political subdivision of a state, or an
 34 agency or corporate or other instrumentality of one (1) or more of
 35 the foregoing or a certificate of deposit for any of the foregoing.

36 (2) A security issued or guaranteed by Canada, a Canadian
 37 province, a political subdivision of a Canadian province, an agency,
 38 or corporate or other instrumentality of one (1) or more of the
 39 foregoing, or any other foreign government with which the United
 40 States currently maintains diplomatic relations, if the security is
 41 recognized as a valid obligation by the issuer or guarantor.

42 (3) A security issued by and representing an interest in or a debt of,
 43 or guaranteed by a bank organized under the laws of the United
 44 States, a bank, savings institution, or trust company organized and
 45 supervised under the laws of a state, a federal savings association,
 46 a savings association organized under the laws of a state and
 47 authorized to do business in Indiana, a federal credit union or a
 48 credit union, industrial loan association, or similar association

- 1 organized and supervised under the laws of this state, or a
2 corporation or organization whose issuance of securities is required
3 by any other law to be passed upon and authorized by the
4 department of financial institutions or by a federal agency or
5 authority.
- 6 (4) A security issued or guaranteed by a railroad or other common
7 or contract carrier, a public utility, or a common or contract carrier
8 or public utility holding company. However, an issuer or guarantor
9 must be subject to regulation or supervision as to the issuance of
10 its own securities by a public commission, board, or officer of the
11 government of the United States, of a state, territory, or insular
12 possession of the United States, of a municipality located in a state,
13 territory, or insular possession, of the District of Columbia, or of
14 the Dominion of Canada or a province of Canada.
- 15 (5) A security listed or approved for listing upon notice of issuance
16 on the New York Stock Exchange, the American Stock Exchange,
17 the Chicago Stock Exchange, or on any other exchange approved
18 and designated by the commissioner, any other security of the
19 same issuer that is of senior rank or substantially equal rank, a
20 security called for by subscription rights or warrants so listed or
21 approved, or a warrant or right to purchase or subscribe to any of
22 the foregoing.
- 23 (6) A promissory note, draft, bill of exchange, or banker's
24 acceptance that is evidence of:
- 25 (A) an obligation;
26 (B) a guarantee of an obligation;
27 (C) a renewal of an obligation; or
28 (D) a guarantee of a renewal of an obligation;
- 29 to pay cash within nine (9) months after the date of issuance,
30 excluding grace days, that is issued in denominations of at least
31 fifty thousand dollars (\$50,000) and receives a rating in one (1) of
32 the three (3) highest rating categories from a nationally recognized
33 statistical rating organization.
- 34 (7) A security issued in connection with an employee stock
35 purchase, savings, pension, profit-sharing, or similar benefit plan.
- 36 (8) A security issued by an association incorporated under
37 IC 15-7-1.
- 38 (9) A security that is an industrial development bond (as defined in
39 Section 103(b)(2) of the Internal Revenue Code of 1954) the
40 interest of which is excludable from gross income under Section
41 103(a)(1) of the Internal Revenue Code of 1954 if, by reason of the
42 application of paragraph (4) or (6) of Section 103(b) of the Internal
43 Revenue Code of 1954 (determined as if paragraphs (4)(A), (5),
44 and (7) were not included in Section 103(b)), paragraph (1) of
45 Section 103(b) does not apply to the security.
- 46 (10) A security issued by a nonprofit corporation that meets the
47 requirements of Section 103(e) of the Internal Revenue Code of
48 1954 and is designated by the governor as the secondary market
49 for guaranteed student loans under IC 20-12-21.2.
- 50 (11) A security designated or approved for designation upon notice

1 of issuance on the National Association of Securities Dealers
2 Automatic Quotation National Market System or any other national
3 market system approved and designated by the commissioner, any
4 other security of the same issuer that is of senior rank or
5 substantially equal rank, a security called for by subscription rights
6 or warrants so listed or approved, or a warrant or right to purchase
7 or subscribe to any of the foregoing.

8 (12) A security that is a "qualified bond" (as defined in Section
9 141(e) of the Internal Revenue Code, as amended).

10 (b) The following transactions are exempted from the registration
11 requirements of section 3 of this chapter:

12 (1) An isolated nonissuer offer or sale, whether effected through a
13 broker-dealer or not.

14 (2) A nonissuer sale effected by or through a registered
15 broker-dealer pursuant to an unsolicited order or offer to buy.

16 (3) A nonissuer offer or sale by a registered broker-dealer, acting
17 either as principal or agent, of issued and outstanding securities if
18 the following conditions are satisfied:

19 (A) The securities are sold at prices reasonably related to the
20 current market price at the time of sale, and if the registered
21 broker-dealer is acting as agent, the commission collected by the
22 registered broker-dealer on account of the sale is not in excess of
23 usual and customary commissions collected with respect to
24 securities and transactions having comparable characteristics.

25 (B) The securities do not constitute an unsold allotment to or
26 subscription by the broker-dealer as a participant in the
27 distribution of the securities by the issuer or by or through an
28 underwriter.

29 (C) Either:

30 (i) information consisting of the names of the issuer's officers
31 and directors, a balance sheet of the issuer as of a date not
32 more than eighteen (18) months prior to the date of the sale,
33 and a profit and loss statement for either the fiscal year
34 preceding that date or the most recent year of operations is
35 published in a securities manual approved by the
36 commissioner;

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

42 (iii) information consisting of the names of the issuer's officers
43 and directors, a balance sheet of the issuer as of a date not
44 more than sixteen (16) months prior to the date of the sale, and
45 a profit and loss statement for either the fiscal year preceding
46 that date or the most recent year of operations is on file with
47 the commissioner. The information required by this item to be
48 on file with the commissioner must be on a form and made in
49 a manner as the commissioner prescribes. The fee for the initial
50 filing of the form shall be twenty-five dollars (\$25). The fee

1 for the annual renewal filing shall be fifteen dollars (\$15).
2 When a filing is withdrawn or is not completed by the issuer,
3 the commissioner must retain the filing fee.

4 (D) There has been compliance with section 6(l) of this chapter.
5 (E) Unless the issuer is registered under the Investment Company
6 Act of 1940, all the following must be true at the time of the
7 transaction:

- 8 (i) The security belongs to a class that has been in the hands of
9 the public for at least ninety (90) days.
10 (ii) The issuer of the security is a going concern, is actually
11 engaged in business, and is not in bankruptcy or receivership.
12 (iii) Except as permitted by order of the commissioner, the
13 issuer and any predecessors have been in continuous operation
14 for at least five (5) years. An issuer or predecessor is in
15 continuous operation only if the issuer or predecessor has
16 gross operating revenue in each of the five (5) years
17 immediately preceding the issuer's or predecessor's claim of
18 exemption and has had total gross operating revenue of at least
19 two million five hundred thousand dollars (\$2,500,000) for
20 those five (5) years or has had gross operating revenue of at
21 least five hundred thousand dollars (\$500,000) in not less than
22 three (3) of those five (5) years.

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

- 25 (i) if the commissioner finds that the further sale of the
26 securities in this state would work or tend to work a fraud on
27 purchasers of the securities;
28 (ii) if the commissioner finds that the financial condition of the
29 issuer is such that it is in the public interest and is necessary
30 for the protection of investors to revoke or restrict the
31 exemption afforded by this subsection; or
32 (iii) if the commissioner finds that, due to the limited number
33 of shares in the hands of the public or due to the limited
34 number of broker-dealers making a market in the securities,
35 there is not a sufficient market for the securities so that there
36 is not a current market price for the securities.

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

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

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

50 (7) A transaction executed by a bona fide pledgee without any

- 1 purpose of evading this chapter.
- 2 (8) An offer or sale to a bank, a savings institution, a trust
- 3 company, an insurance company, an investment company (as
- 4 defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1
- 5 through 80a-52)), a pension or profit-sharing trust, or other
- 6 financial institution or institutional buyer, or to a broker-dealer,
- 7 whether the purchaser is acting for itself or in a fiduciary capacity.
- 8 (9) The offer or sale of securities of an issuer:
- 9 (i) to a person who is:
- 10 (A) a director, an executive officer, a general partner, an
- 11 administrator, or a person who performs similar functions for
- 12 or who is similarly situated with respect to the issuer;
- 13 (B) a director, an executive officer, or a general partner of a
- 14 general partner of the issuer; or
- 15 (C) any other natural person employed on a full-time basis by
- 16 the issuer as an attorney or accountant if the person has been
- 17 acting in this capacity for at least one (1) year immediately
- 18 prior to the offer or sale;
- 19 (ii) to an entity affiliated with the issuer;
- 20 (iii) if the issuer is a corporation, to a person who is the owner
- 21 of shares of the corporation or of an affiliated corporation
- 22 representing and possessing ten percent (10%) or more of the
- 23 total combined voting power of all classes of stock (of the
- 24 corporation or affiliated corporation) issued and outstanding and
- 25 who is entitled to vote; or
- 26 (iv) if the issuer is a limited liability company, to a person who is
- 27 the owner of an interest in the limited liability company
- 28 representing and possessing at least ten percent (10%) of the
- 29 total combined voting power of all classes of such interests (of
- 30 the limited liability company or affiliated limited liability company)
- 31 issued and outstanding.
- 32 (10) The offer or sale of a security by the issuer of the security if
- 33 all of the following conditions are satisfied:
- 34 (A) The issuer reasonably believes that either:
- 35 (i) there are no more than thirty-five (35) purchasers of the
- 36 securities from the issuer in an offering pursuant to this
- 37 subsection, including purchasers outside Indiana; or
- 38 (ii) there are no more than twenty (20) purchasers in Indiana.
- 39 In either case, there shall be excluded in determining the number
- 40 of purchasers a purchaser whom the issuer reasonably believes
- 41 to be an accredited investor or who purchases the securities after
- 42 they are registered under this chapter.
- 43 (B) The issuer does not offer or sell the securities by means of
- 44 a form of general advertisement or general solicitation.
- 45 (C) The issuer reasonably believes that each purchaser of the
- 46 securities is acquiring the securities for the purchaser's own
- 47 investment and is aware of any restrictions imposed on
- 48 transferability and resale of the securities. The basis for
- 49 reasonable belief may include:
- 50 (i) obtaining a written representation signed by the purchaser

1 that the purchaser is acquiring the securities for the
2 purchaser's own investment and is aware of any restrictions
3 imposed on the transferability and resale of the securities; and
4 (ii) placement of a legend on the certificate or other document
5 that evidences the securities stating that the securities have not
6 been registered under section 3 of this chapter, and setting
7 forth or referring to the restrictions on transferability and sale
8 of the securities.

9 (D) The issuer:

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

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

19 (E) If the aggregate offering price of the securities in an offering
20 pursuant to this subdivision (including securities sold outside of
21 Indiana) does not exceed five hundred thousand dollars
22 (\$500,000), the issuer is not required to comply with clause (D)
23 if the issuer files with the commissioner and provides to each
24 purchaser in Indiana the following information and materials:

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

28 (ii) unless clearly presented in all written materials, a written
29 notification setting forth the name, address, and form of
30 organization of the issuer and any affiliate, the nature of the
31 principal businesses of the issuer and any affiliate, and the
32 information required in section 5(b)(1)(B), 5(b)(1)(C),
33 5(b)(1)(D), 5(b)(1)(E), 5(b)(1)(H), and 5(b)(1)(I) of this
34 chapter.

35 (F) The commissioner does not disallow the exemption provided
36 by this subdivision within ten (10) full business days after receipt
37 of the filing required by clause (D) or (E). The issuer may make
38 offers (but not sales) before and during the ten (10) day period,
39 if:

40 (i) each prospective purchaser is advised in writing that the
41 offer is preliminary and subject to material change; and

42 (ii) no enforceable offer to purchase the securities may be
43 made by a prospective purchaser, and no consideration in any
44 form may be accepted or received (directly or indirectly) from
45 a prospective purchaser, before the expiration of the ten (10)
46 day period and the vacation of an order disallowing the
47 exemption.

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

49 (i) each purchaser has access to all the material facts with
50 respect to the securities by reason of the purchaser's active

- 1 involvement in the organization or management of the issuer or
2 the purchaser's family relationship with a person actively
3 involved in the organization or management of the issuer;
- 4 (ii) there are not more than fifteen (15) purchasers in Indiana
5 and each Indiana purchaser is an accredited investor or is a
6 purchaser described in item (i); or
- 7 (iii) the aggregate offering price of the securities, including
8 securities sold outside Indiana, does not exceed five hundred
9 thousand dollars (\$500,000), the total number of purchasers,
10 including purchasers outside of Indiana, does not exceed
11 twenty-five (25) and each purchaser either receives all of the
12 material facts with respect to the security or is an accredited
13 investor or a purchaser described in item (i).
- 14 (H) If the issuer makes or is required to make a filing with the
15 commissioner under clause (D) or (E), the issuer must also file
16 with the commissioner at the time of the filing the consent to
17 service of process required by section 16 of this chapter. The
18 issuer shall also file with the commissioner, at the times and in
19 the forms as the commissioner may prescribe, notices of sales
20 made in reliance upon this subdivision.
- 21 (I) The commissioner may by rule deny exemption provided in
22 this subdivision to a particular class of issuers, or may make the
23 exemption available to the issuers upon compliance with
24 additional conditions and requirements, if appropriate in
25 furtherance of the intent of this chapter.
- 26 (11) An offer or sale of securities to existing security holders of the
27 issuer, including persons who at the time of the transaction are
28 holders of convertible securities, nontransferable warrants, or
29 transferable warrants exercisable within not more than ninety (90)
30 days of their issuance if no commission or other remuneration
31 (other than a standby commission) is paid or given for soliciting a
32 security holder in this state.
- 33 (12) An offer (but not a sale) of a security for which registration
34 statements or applications have been filed under this chapter and
35 the Securities Act of 1933 (15 U.S.C. 77a-77aa), if no stop order
36 or refusal order is in effect and no public proceeding or
37 examination looking toward an order is pending under either law.
- 38 (13) The deposit of shares under a voting-trust agreement and the
39 issue of voting-trust certificates for the deposit.
- 40 (14) The offer or sale of a commodity futures contract.
- 41 (15) The offer or sale of securities to or for the benefit of security
42 holders incident to a vote by the security holders pursuant to the
43 articles of incorporation or applicable instrument, on a merger or
44 share exchange under IC 23-1-40 or the laws of another state,
45 reclassification of securities, exchange of securities under
46 IC 28-1-7.5, or sale of assets of the issuer in consideration of the
47 issuance of securities of the same or another issuer.
- 48 (16) A limited offering transactional exemption, which may be
49 created by rule adopted by the commissioner. The exemption must
50 further the objectives of compatibility with federal exemptions and

1 uniformity among the states.

2 (c) The commissioner may consider and determine if a proposed sale,
3 transaction, issue, or security is entitled to an exemption accorded by
4 this section. The commissioner may decline to exercise the
5 commissioner's authority as to a proposed sale, transaction, issue, or
6 security. An interested party desiring the commissioner to exercise the
7 commissioner's authority must submit to the commissioner a verified
8 statement of all material facts relating to the proposed sale, transaction,
9 issue, or security, which must be accompanied by a request for a ruling
10 as to the particular exemption claimed, together with a filing fee of one
11 hundred dollars (\$100). After notice to the interested parties as the
12 commissioner determines is proper and after a hearing, if any, the
13 commissioner may enter an order finding the proposed sale, transaction,
14 issue, or security entitled or not entitled to the exemption claimed. An
15 order entered, unless an appeal is taken from it in the manner prescribed
16 in section 20 of this chapter, is binding upon the commissioner and
17 upon all interested parties, provided that the proposed sale, transaction,
18 issue, or security when consummated or issued conforms in every
19 relevant and material particular with the facts as set forth in the verified
20 statement submitted.

21 (d) The commissioner may by order deny or revoke an exemption
22 specified in subsection (a)(6), (a)(7), or (b) with respect to a specific
23 security or transaction, if the commissioner finds that the securities to
24 which the exemption applies would not qualify for registration under
25 sections 4 and 5 of this chapter. No order may be entered without
26 appropriate prior notice to all interested parties, opportunity for hearing,
27 and written findings of fact and conclusions of law, except that the
28 commissioner may by order summarily deny or revoke any of the
29 specific exemptions pending final determination of a proceeding under
30 this subsection. Upon the entry of a summary order, the commissioner
31 shall promptly notify all interested parties that it has been entered, of the
32 reasons for the order, and that within fifteen (15) days of the receipt of
33 a written request the matter will be set down for hearing. If no hearing
34 is requested and none is ordered by the commissioner, the order will
35 remain in effect until it is modified or vacated by the commissioner. If
36 a hearing is requested or ordered, the commissioner, after notice of and
37 opportunity for hearing to all interested persons, may modify or vacate
38 the order or extend it until final determination. No order under this
39 subsection may operate retroactively. No person may be considered to
40 have violated section 3 of this chapter by reason of an offer or sale
41 effected after the entry of an order under this subsection if the person
42 sustains the burden of proof that the person did not know, and in the
43 exercise of reasonable care could not have known, of the order.

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

48 **(f) A condition, stipulation, or provision requiring a person**
49 **acquiring a security to waive compliance with this chapter or a**
50 **rule or order under this chapter is void.**

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

- 4 (1) the issuer;
- 5 (2) any other person on whose behalf the offering is to be made; or
- 6 (3) a registered broker-dealer.

7 (b) A person filing an application for registration shall pay a filing fee
8 of one-twentieth of one percent (0.05%) of the maximum aggregate
9 offering price at which the registered securities are to be offered in
10 Indiana, but the fee may not be less than two hundred fifty dollars
11 (\$250) and may not be more than one thousand dollars (\$1,000).

12 (c) When an application for registration under subsection (b) is
13 withdrawn before the effective date or a preeffective stop order is
14 entered under section 7 of this chapter, the commissioner shall retain
15 two hundred fifty dollars (\$250) of the fee.

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

19 (e) An application for registration shall specify:

- 20 (1) the amount of securities to be offered in this state;
- 21 (2) the states in which a registration statement or similar document
22 in connection with the offering has been or is to be filed; and
- 23 (3) an adverse order, judgment, or decree entered in connection
24 with the offering by the regulatory authorities in each state or by a
25 court or the Securities and Exchange Commission.

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

30 (g) The commissioner may by rule or otherwise permit the omission
31 of an item of information or document from an application for
32 registration.

33 (h) In the case of a nonissuer distribution, any part of the information
34 that might otherwise be required under section 5 of this chapter or
35 subsection (i) need not be furnished if the person filing the application
36 for registration produces evidence to the reasonable satisfaction of the
37 commissioner that the person, or the persons on whose behalf the
38 distribution is to be made, cannot furnish that part of the required
39 information without unreasonable effort or expense.

40 (i) A registration is effective for:

- 41 (1) two (2) years from its effective date; or
- 42 (2) a shorter period during which the security is being offered or
43 distributed in a nonexempted transaction by or for the account of
44 the issuer or the person on whose behalf the offering is being made
45 or by an underwriter or broker-dealer who is still offering part of
46 an unsold allotment or subscription taken by the underwriter or
47 broker-dealer as a participant in the distribution, except during the
48 time a stop order is in effect under section 7 of this chapter.

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

1 to file reports, not more often than quarterly, to keep reasonably current
 2 the information contained in the application for registration and to
 3 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 from
 8 the public offering price, or to a person for a consideration other
 9 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 back
 31 to the date of the sale of additional securities being registered if the
 32 amendment is filed within three (3) months after the date of the sale and
 33 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

43 (B) rules adopted by the commissioner; and

44 (2) shall not be treated as obligations issued by the United States for
 45 the purposes of this chapter.

46 (o) If:

47 (1) the division:

48 (A) does not approve an application for registration by
 49 coordination or qualification; and

50 (B) notifies the applicant not later than ten (10) days after

- 1 **the date the application was not approved of a deficiency in**
 2 **the application that, if satisfied, would allow the approval of**
 3 **the application;**
 4 **the applicant may satisfy the deficiency within sixty (60) days**
 5 **after the date described in clause (B); and**
 6 **(2) an applicant does not satisfy the deficiency described in**
 7 **subdivision (1):**
 8 **(A) the application is considered abandoned;**
 9 **(B) the issuer does not receive a refund of the application**
 10 **fee; and**
 11 **(C) no further action is required by the division.**

12 SECTION 7. IC 23-2-1-15, AS AMENDED BY P.L.270-2003,
 13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2004]: Sec. 15. (a) This chapter shall be administered by a
 15 division of the office of the secretary of state. The secretary of state
 16 shall appoint a securities commissioner who shall be responsible for the
 17 direction and supervision of the division and the administration of this
 18 chapter under the direction and control of the secretary of state. The
 19 salary of the securities commissioner shall be paid out of the funds
 20 appropriated for the administration of this chapter. The commissioner
 21 shall serve at the will of the secretary of state.

22 (b) The secretary of state:

- 23 (1) shall employ a chief deputy, a senior investigator, a senior
 24 accountant, and other deputies, investigators, accountants, clerks,
 25 stenographers, and other employees necessary for the
 26 administration of this chapter; and
 27 (2) shall fix their compensation with the approval of the budget
 28 agency.

29 The chief deputy, other deputies, the senior investigator, and the senior
 30 accountant, once employed under this chapter, may be dismissed only
 31 for cause by the secretary of state upon ten (10) days notice in writing
 32 stating the reasons for dismissal. Within fifteen (15) days after
 33 dismissal, the chief deputy, other deputies, the senior investigator, and
 34 the senior accountant may appeal to the state personnel board. The state
 35 personnel board shall hold a hearing, and if it finds that the appealing
 36 party was dismissed for a political, social, religious, or racial reason, the
 37 appealing party shall be reinstated to the appealing party's position
 38 without loss of pay. In all other cases, if the decision is favorable to the
 39 appealing party, the secretary of state shall follow the findings and
 40 recommendations of the board, which may include reinstatement and
 41 payment of salary or wages lost. The hearing and any subsequent
 42 proceedings or appeals shall be governed by the provisions of IC 4-15-2
 43 and IC 4-21.5.

44 (c) Fees and funds of whatever character accruing from the
 45 administration of this chapter shall be accounted for by the secretary of
 46 state and shall be deposited with the treasurer of state to be deposited
 47 by the treasurer of state in the general fund of the state. Expenses
 48 incurred in the administration of this chapter shall be paid from the
 49 general fund upon appropriation being made for the expenses in the

1 manner provided by law for the making of those appropriations.
2 However, costs of investigations recovered under sections 16(d) and
3 17.1(c) of this chapter shall be deposited with the treasurer of state to
4 be deposited by the treasurer of state in a separate account to be known
5 as the securities division enforcement account. The funds in the
6 account shall be available, with the approval of the budget agency, to
7 augment and supplement the funds appropriated for the administration
8 of this chapter. The funds in the account do not revert to the general
9 fund at the end of any fiscal year.

10 (d) In connection with the administration and enforcement of the
11 provisions of this chapter, the attorney general shall render all necessary
12 assistance to the securities commissioner upon the commissioner's
13 request, and to that end, the attorney general shall employ legal and
14 other professional services as are necessary to adequately and fully
15 perform the service under the direction of the securities commissioner
16 as the demands of the securities division shall require. Expenses
17 incurred by the attorney general for the purposes stated in this
18 subsection shall be chargeable against and paid out of funds
19 appropriated to the attorney general for the administration of the
20 attorney general's office.

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

25 (f) The commissioner, subject to the approval of the secretary of
26 state, may adopt rules, orders, and forms necessary to carry out this
27 chapter, including rules and forms concerning registration statements,
28 applications, reports, and the definitions of any terms if the definitions
29 are consistent with this chapter. The commissioner may by rule or
30 order allow for exemptions from registration requirements under
31 sections 3 and 8 of this chapter if the exemptions are consistent with
32 the public interest and this chapter.

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

36 (1) the practice or commission of fraud may be prohibited and
37 prevented;

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

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

45 It is the intent and purpose of this chapter to delegate and grant to and
46 vest in the secretary of state, the securities division, and the securities
47 commissioner full and complete power to carry into effect and
48 accomplish the purpose of this chapter and to charge them with full and
49 complete responsibility for its effective administration.

50 (h) It is the duty of a prosecuting attorney, as well as of the attorney

1 general, to assist the securities commissioner upon the commissioner's
2 request in the prosecution to final judgment of a violation of the penal
3 provisions of this chapter and in a civil proceeding or action arising
4 under this chapter. If the commissioner determines that an action based
5 on the securities division's investigations is meritorious:

6 (1) the commissioner or a designee empowered by the
7 commissioner shall certify the facts drawn from the investigation
8 to the prosecuting attorney of the judicial circuit in which the crime
9 may have been committed;

10 (2) the commissioner and the securities division shall assist the
11 prosecuting attorney in prosecuting an action under this section,
12 **which may include a securities division attorney serving as a**
13 **special deputy prosecutor appointed by the prosecuting**
14 **attorney;**

15 (3) a prosecuting attorney to whom facts concerning fraud are
16 certified under subdivision (1) may refer the matter to the attorney
17 general; and

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

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

23 (B) prosecute the alleged offense.

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

34 (j) The securities commissioner and each employee of the securities
35 division shall be reimbursed for necessary hotel and travel expenses
36 when required to travel on official duty. Hotel and travel
37 reimbursements shall be paid in accordance with the travel regulations
38 prescribed by the budget agency.

39 (k) It is unlawful for the secretary of state, the securities
40 commissioner, or the securities division's employees to use for personal
41 benefit information that is filed with or obtained by the securities
42 division and that is not made public. No provision of this chapter
43 authorizes the secretary of state, the securities commissioner, or the
44 employees of the securities division to disclose information except
45 among themselves, or when necessary or appropriate, in a proceeding
46 or investigation under this chapter. No provision of this chapter either
47 creates or derogates from a privilege that exists at common law or
48 otherwise when documentary or other evidence is sought under a
49 subpoena directed to the secretary of state, the securities commissioner,
50 or the securities division or its employees.

1 (l) The commissioner may honor requests from interested persons for
 2 interpretative opinions and from interested persons for determinations
 3 that the commissioner will not institute enforcement proceedings against
 4 specified persons for specified activities. A determination not to institute
 5 enforcement proceedings must be consistent with this chapter. **A**
 6 **person may not request an interpretive opinion concerning an**
 7 **activity that:**

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

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

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

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

28 (1) the value of the security when the buyer disposed of the
 29 security; and

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

32 (b) A person who purchases a security in violation of this chapter,
 33 and who does not sustain the burden of proof that the person did not
 34 know and in the exercise of reasonable care could not have known of
 35 the violation, is liable to any other party to the transaction who did not
 36 knowingly participate in the violation or who did not have, at the time
 37 of the transaction, knowledge of the violation. The other party to the
 38 transaction may bring an action to rescind the transaction or for
 39 damages, together, in either case, with reasonable attorney's fees, upon
 40 the tender of the consideration received by the person bringing the
 41 action.

42 (c) A person who, for compensation, engages in the business of
 43 advising others, either directly or through publications or writings, as
 44 to the value of securities or as to the advisability of investing in,
 45 purchasing, or selling securities, or who, for compensation and as a
 46 part of a regular business, issues analyses or reports concerning
 47 securities and:

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

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

1 (3) engages in an act that operates or would operate as fraud or
2 deceit upon a person;
3 is liable to the other person, who may bring an action to recover any
4 consideration paid for advice, any loss due to advice, interest at eight
5 percent (8%) each year from the date consideration was paid, costs,
6 and reasonable attorney's fees less the value of cash or property
7 received due to the advice. It is a defense to an action brought for a
8 violation of section 12.1(b) **or 26** of this chapter that the person
9 accused of the violation did not know of the violation and, exercising
10 reasonable care, could not have known of the violation.

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

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

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

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

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

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

35 (B) all other securities at the rate of eight percent (8%) per year;
36 less the amount of any income received on the security, and the
37 person failed to accept the offer within thirty (30) days of its
38 receipt; or

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

42 (h) No person who has made or engaged in the performance of a
43 contract in violation of this chapter or a rule or order under this chapter,
44 or who has acquired a purported right under a contract with knowledge
45 of the facts by reason of which its making or performance was in
46 violation, may base a suit on the contract.

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

50 (j) The rights and remedies specifically prescribed by this chapter are

1 the only rights and remedies created by this chapter, but are in addition
2 to any other rights or remedies that exist at law or in equity.

3 SECTION 9. IC 23-2-1-19.5 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19.5. (a) If the
5 commissioner determines, after **notice and opportunity for** a hearing,
6 that any person has violated this chapter, the commissioner may, in
7 addition to or in lieu of all other remedies, impose a civil penalty upon
8 any person who has violated this chapter. This penalty may not exceed
9 ten thousand dollars (\$10,000) for each violation of this chapter found
10 to have been committed. An appeal from the decision of the
11 commissioner imposing a civil penalty under this subsection may be
12 taken by any aggrieved party pursuant to section 20 of this chapter.

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

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

19 SECTION 10. IC 23-2-1-26 IS ADDED TO THE INDIANA CODE
20 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2004]: **Sec. 26. (a) This section applies to a person engaged in
22 the business of providing advice to others, directly or by means of
23 analyses, reports, or other publications, concerning:**

24 (1) the value of securities; or

25 (2) the advisability of:

26 (A) investing in;

27 (B) purchasing; or

28 (C) selling;

29 securities.

30 (b) A person described in subsection (a) may not:

31 (1) employ a device, a scheme, or an artifice to defraud a
32 person; or

33 (2) engage in an act, a practice, or a course of business that
34 operates or would operate as fraud or deceit upon a person.

35 SECTION 11. IC 23-2-1-27 IS ADDED TO THE INDIANA CODE
36 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
37 1, 2004]: **Sec. 27. An administrative action under this chapter
38 survives the death of a person who might have been a respondent.**

39 SECTION 12. IC 23-2-5-3, AS AMENDED BY P.L.115-2001,
40 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2004]: Sec. 3. (a) As used in this chapter, "certificate of
42 registration" means a certificate issued by the commissioner authorizing
43 an individual to engage in origination activities on behalf of a licensee.

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

45 (1) that loans funds of the person in connection with a loan; and

46 (2) to whom the loan is initially payable on the face of the note or
47 contract evidencing the loan.

48 (c) As used in this chapter, "license" means a license issued by the
49 commissioner authorizing a person to engage in the loan brokerage

1 business.

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

4 (e) As used in this chapter, "loan broker" means any person who, in
5 return for any consideration from any **source procures, attempts to**
6 **procure, or assists in procuring a loan from a third party or any**
7 **other person, promises to procure a loan for any person or assist any**
8 **person in procuring a loan from any third party, or who promises to**
9 **consider whether or not to make a loan to any person: whether or not**
10 **the person seeking the loan actually obtains the loan. "Loan**
11 **broker" does not include:**

12 (1) any bank, savings bank, trust company, savings association,
13 credit union, or any other financial institution that is:

14 (A) regulated by any agency of the United States or any state;
15 and

16 (B) regularly actively engaged in the business of making
17 consumer loans that are not secured by real estate or taking
18 assignment of consumer sales contracts that are not secured by
19 real estate;

20 ~~(2) any person authorized to sell and service loans for the Federal~~
21 ~~National Mortgage Association or the Federal Home Loan Mortgage~~
22 ~~Corporation, issue securities backed by the Government National~~
23 ~~Mortgage Association, make loans insured by the United States~~
24 ~~Department of Housing and Urban Development, act as a~~
25 ~~supervised lender or nonsupervised automatic lender of the United~~
26 ~~States Department of Veterans Affairs, or act as a correspondent~~
27 ~~of loans insured by the United States Department of Housing and~~
28 ~~Urban Development;~~

29 ~~(3)~~ (2) any insurance company; or

30 ~~(4)~~ (3) any person arranging financing for the sale of the person's
31 product.

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

34 (g) As used in this chapter, "origination activities" means ~~establishing~~
35 ~~the terms or conditions of a loan with a borrower or prospective~~
36 ~~borrower communication with or assistance of a borrower or~~
37 **prospective borrower in the selection of loan products or terms.**

38 (h) **As used in this chapter, "originator" means a person**
39 **engaged in origination activities. The term "originator" does not**
40 **include a person who performs origination activities for any entity**
41 **that is not a loan broker under subsection (e).**

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

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

48 ~~(k)~~ (k) As used in this chapter, "ultimate equitable owner" means a
49 person who, directly or indirectly, owns or controls any ownership

1 interest in a person, regardless of whether the person owns or controls
 2 the ownership interest through one (1) or more other persons or one (1)
 3 or more proxies, powers of attorney, or variances.

4 SECTION 13. IC 23-2-5-19, AS AMENDED BY P.L.230-1999,
 5 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2004]: Sec. 19. (a) The following persons are exempt from the
 7 requirements of sections 4, 5, 6, 9, ~~10~~, 17, ~~and~~ 18, **and 21** of this
 8 chapter:

9 (1) Any attorney while engaging in the practice of law.

10 (2) Any certified public accountant, public accountant, or
 11 accountant practitioner holding a certificate or registered under
 12 IC 25-2.1 while performing the practice of accountancy (as defined
 13 by IC 25-2.1-1-10).

14 (3) Any person licensed as a real estate broker or salesperson under
 15 IC 25-34.1 to the extent that the person is rendering loan related
 16 services in the ordinary course of a transaction in which a license
 17 as a real estate broker or salesperson is required.

18 (4) Any broker-dealer, agent, or investment advisor registered
 19 under IC 23-2-1.

20 (5) Any person that:

21 (A) procures;

22 (B) promises to procure; or

23 (C) assists in procuring;

24 a loan that is not subject to the Truth in Lending Act (15 U.S.C.
 25 1601 through 1667e).

26 (6) **Any community development corporation (as defined in**
 27 **IC 4-4-28-2) acting as a subrecipient of funds from the**
 28 **Indiana housing finance authority established by IC 5-20-1-3.**

29 (7) **The Indiana housing finance authority.**

30 (8) **Any person authorized to:**

31 (A) **sell and service a loan for the Federal National Mortgage**
 32 **Association or the Federal Home Loan Mortgage**
 33 **Association;**

34 (B) **issue securities backed by the Government National**
 35 **Mortgage Association;**

36 (C) **make loans insured by the United States Department of**
 37 **Housing and Urban Development or the United States**
 38 **Department of Agriculture Rural Housing Service;**

39 (D) **act as a supervised lender or nonsupervised automatic**
 40 **lender of the United States Department of Veterans Affairs;**

41 **or**

42 (E) **act as a correspondent of loans insured by the United**
 43 **States Department of Housing and Urban Development.**

44 (9) Any person who is a creditor, or proposed to be a creditor, for
 45 any loan.

46 (b) As used in this chapter, "bona fide third party fee" includes fees
 47 for the following:

48 (1) Credit reports, investigations, and appraisals performed by a
 49 person who holds a license or certificate as a real estate appraiser

1 under IC 25-34.1-8.

2 (2) If the loan is to be secured by real property, title examinations,
3 an abstract of title, title insurance, a property survey, and similar
4 purposes.

5 (3) The services provided by a loan broker in procuring possible
6 business for a lending institution if the fees are paid by the lending
7 institution.

8 (c) As used in this section, "successful procurement of a loan" means
9 that a binding commitment from a creditor to advance money has been
10 received and accepted by the borrower.

11 (d) The burden of proof of any exemption or classification provided
12 in this chapter is on the party claiming the exemption or classification.

13 SECTION 14. IC 23-15-8-3, AS ADDED BY P.L.277-2001,
14 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2004]: Sec. 3. (a) If the department of financial institutions
16 determines that a business entity has violated IC 28-1-20-4, the
17 department of financial institutions shall notify the secretary of state of
18 the violation.

19 (b) The secretary of state shall commence a proceeding under this
20 section to administratively dissolve a business entity if:

21 (1) the name of the business entity contains the word "bank",
22 **"banc", or "banco";** and

23 (2) the department of financial institutions determines that the
24 business entity violates IC 28-1-20-4.

25 (c) If the secretary of state commences an administrative dissolution
26 under subsection (b), the secretary of state shall serve the business
27 entity with written notice of the determination under subsection (b)(2).
28 The secretary of state shall, at the same time notice is sent to the
29 business entity, provide a copy of the notice to the department of
30 financial institutions.

31 (d) If a business entity that receives a notice under subsection (c)
32 does not:

33 (1) correct the grounds for dissolution; or

34 (2) demonstrate to the reasonable satisfaction of the department of
35 financial institutions that the grounds for dissolution do not exist;
36 at any time after sixty (60) days after service of the notice is perfected,
37 the department of financial institutions shall notify the secretary of state
38 in writing of the continuing violation. After receiving the written notice
39 from the department of financial institutions, the secretary of state shall
40 administratively dissolve the business entity by signing a certificate of
41 dissolution that recites the grounds for dissolution and the effective date
42 of the dissolution. The secretary of state shall file the original certificate
43 of dissolution and serve a copy of the certificate of dissolution on the
44 business entity.

45 (e) A business entity administratively dissolved under this section may
46 carry on only those activities necessary to wind up and liquidate the
47 business entity's affairs.

48 SECTION 15. IC 24-4.5-1-102, AS AMENDED BY P.L.258-2003,
49 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
50 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 102. Purposes; Rules of

1 Construction—(1) This article shall be liberally construed and applied to
2 promote its underlying purposes and policies.

3 (2) The underlying purposes and policies of this article are:

4 (a) to simplify, clarify, and modernize the law governing retail
5 installment sales, consumer credit, small loans, and usury;

6 (b) to provide rate ceilings to assure an adequate supply of credit
7 to consumers;

8 (c) to further consumer understanding of the terms of credit
9 transactions and to foster competition among suppliers of
10 consumer credit so that consumers may obtain credit at reasonable
11 cost;

12 (d) to protect consumer buyers, lessees, and borrowers against
13 unfair practices by some suppliers of consumer credit, having due
14 regard for the interests of legitimate and scrupulous creditors;

15 (e) to permit and encourage the development of fair and
16 economically sound consumer credit practices;

17 (f) to conform the regulation of consumer credit transactions to the
18 policies of the Federal Consumer Credit Protection Act; and

19 (g) to make uniform the law including administrative rules among
20 the various jurisdictions.

21 (3) A reference to a requirement imposed by this article includes
22 reference to a related rule of the department adopted pursuant to this
23 article.

24 (4) A reference to a federal law in IC 24-4.5 is a reference to the law
25 in effect December 31, ~~2002~~ 2003.

26 SECTION 16. IC 24-4.5-1-202 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 202. This article does
28 not apply to the following:

29 (1) Extensions of credit to government or governmental agencies
30 or instrumentalities.

31 (2) The sale of insurance by an insurer, except as otherwise
32 provided in the chapter on insurance (IC 24-4.5-4).

33 (3) Transactions under public utility, municipal utility, or common
34 carrier tariffs if a subdivision or agency of this state or of the
35 United States regulates the charges for the services involved, the
36 charges for delayed payment, and any discount allowed for early
37 payment.

38 (4) The rates and charges and the disclosure of rates and charges
39 of a licensed pawnbroker established in accordance with a statute
40 or ordinance concerning these matters.

41 (5) A sale of goods, services, or an interest in land in which the
42 goods, services, or interest in land are purchased primarily for a
43 purpose other than a personal, family, or household purpose.

44 (6) A loan in which the debt is incurred primarily for a purpose
45 other than a personal, family, or household purpose.

46 (7) An extension of credit primarily for a business, a commercial,
47 or an agricultural purpose.

48 (8) An installment agreement for the purchase of home fuels in
49 which a finance charge is not imposed.

50 (9) Loans made, insured, or guaranteed under a program authorized

1 by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070
2 et seq.).

3 (10) Transactions in securities or commodities accounts in which
4 credit is extended by a broker-dealer registered with the Securities
5 and Exchange Commission or the Commodity Futures Trading
6 Commission.

7 **(11) A loan made:**

8 **(A) in compliance with the requirements of; and**

9 **(B) by a community development corporation (as defined in**

10 **IC 4-4-28-2) acting as a subrecipient of funds from;**

11 **the Indiana housing finance authority established by**
12 **IC 5-20-1-3.**

13 SECTION 17. IC 24-4.5-7-104, AS ADDED BY P.L.38-2002,
14 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2004]: Sec. 104. "Small loan" means a loan:

16 (a) with a principal loan amount that is ~~more than at least~~ fifty
17 dollars (\$50) and ~~less than four not more than five~~ hundred ~~one~~
18 dollars ~~(\$401);~~ **(\$500);** and

19 (b) in which the lender holds the borrower's check **or receives the**
20 **borrower's written authorization to debit the borrower's**
21 **account** under an agreement, either express or implied, for a
22 specific period before the lender:

23 (i) offers the check for deposit or presentment; or

24 (ii) ~~seeks exercises the~~ authorization to ~~transfer or withdraw~~
25 ~~funds from debit~~ the borrower's account.

26 SECTION 18. IC 24-4.5-7-105, AS ADDED BY P.L.38-2002,
27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2004]: Sec. 105. "Principal" means the total of:

29 (a) the net amount paid to, receivable by, or paid or payable from
30 the account of the ~~consumer;~~ **borrower;** and

31 (b) to the extent that the payment is deferred, the additional charges
32 permitted by this chapter that are not included in subdivision (a).

33 SECTION 19. IC 24-4.5-7-107, AS ADDED BY P.L.38-2002,
34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2004]: Sec. 107. "Renewal" refers to a small loan that takes the
36 place of an existing small loan by:

37 (a) renewing;

38 (b) repaying;

39 (c) refinancing; or

40 (d) consolidating;

41 a small loan with the proceeds of another small loan made to the same
42 ~~consumer borrower~~ by a lender.

43 SECTION 20. IC 24-4.5-7-108, AS ADDED BY P.L.38-2002,
44 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
45 JULY 1, 2004]: Sec. 108. "Consecutive small loan" means a new small
46 loan agreement that the lender enters with the same ~~consumer borrower~~
47 not later than seven (7) calendar days after a previous small loan made
48 to that ~~customer borrower~~ is paid in full.

49 SECTION 21. IC 24-4.5-7-109, AS ADDED BY P.L.38-2002,

1 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2004]: Sec. 109. "Paid in full" means the termination of a small
3 loan through:

- 4 (1) the payment of the ~~consumer's~~ **borrower's** check by the
5 drawee bank or authorized electronic transfer;
- 6 (2) the return of a check to a ~~consumer~~ **borrower** who redeems it
7 for consideration;
- 8 (3) **the authorized debiting of the borrower's account;** or
- 9 (4) any other method of termination.

10 SECTION 22. IC 24-4.5-7-110, AS ADDED BY P.L.38-2002,
11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2004]: Sec. 110. "Monthly ~~net gross~~ income" means the
13 income received by the ~~consumer borrower~~ in the ~~four (4) week~~ **thirty**
14 **(30) day** period preceding the ~~consumer's borrower's~~ application for
15 a small loan under this chapter and exclusive of any income other than
16 regular ~~net gross~~ pay received, or as otherwise determined by the
17 department.

18 SECTION 23. IC 24-4.5-7-201, AS ADDED BY P.L.38-2002,
19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2004]: Sec. 201. (1) Finance charges on the first ~~one~~ **two**
21 hundred ~~fifty~~ **dollars (\$100) (\$250)** of a small loan are limited to fifteen
22 percent (15%) of the principal.

23 (2) Finance charges on the amount of a small loan greater than ~~one~~
24 **two hundred fifty** dollars ~~(\$100) (\$250)~~ **and less than or equal to**
25 **four hundred dollars (\$400)** are limited to ~~ten~~ **thirteen** percent ~~(10%)~~
26 **(13%)** of the amount over ~~one~~ **two hundred fifty** dollars ~~(\$100)-~~ **(\$250)**
27 **and less than four hundred dollars (\$400).**

28 (3) ~~The total amount of finance charges may not exceed thirty-five~~
29 ~~dollars (\$35)-~~ **Finance charges on the amount of the small loan**
30 **greater than four hundred dollars (\$400) and less than or equal to**
31 **five hundred dollars (\$500) are limited to ten percent (10%) of the**
32 **amount over four hundred dollars (\$400) and less than five**
33 **hundred dollars (\$500).**

34 SECTION 24. IC 24-4.5-7-202, AS ADDED BY P.L.38-2002,
35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2004]: Sec. 202. (1) Notwithstanding any other law, ~~only the~~
37 ~~following fees~~ **the only fee that** may be contracted for and received
38 by the lender on a small loan ~~or subsequent refinancing~~.

39 (a) ~~The parties may contract for a delinquency charge of not more~~
40 ~~than five dollars (\$5) on any installment not paid in full within ten~~
41 ~~(10) days after its scheduled due date-~~

42 (b) ~~A delinquency charge under this section may be collected only~~
43 ~~once on an installment, however long it remains in default. A~~
44 ~~delinquency charge may be collected any time after it accrues-~~

45 (2) ~~an additional charge may be made is a charge,~~ not to exceed
46 twenty dollars (\$20), for each:

- 47 (a) return by a bank or other depository institution of a:
 - 48 (i) dishonored check;

- 1 (ii) negotiable order of withdrawal; or
 2 (iii) share draft issued by the ~~consumer~~; **borrower; or**
 3 **(b) time an authorization to debit the borrower's account is**
 4 **dishonored.**

5 This additional charge may be assessed one (1) time regardless of how
 6 many times a check **or an authorization to debit the borrower's**
 7 **account** may be submitted by the lender and dishonored.

8 SECTION 25. IC 24-4.5-7-301, AS ADDED BY P.L.38-2002,
 9 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2004]: Sec. 301. (1) For purposes of this section, the lender
 11 shall disclose to the ~~consumer~~ **borrower** to whom credit is extended
 12 with respect to a small loan the information required by the Federal
 13 Consumer Credit Protection Act.

14 (2) In addition to the requirements of subsection (1), the lender must
 15 conspicuously display in bold type a notice to the public both in the
 16 lending area of each business location and in the loan documents the
 17 following statement:

18 "WARNING: A small loan is not intended to meet long term
 19 financial needs. A small loan should be used only to meet short
 20 term cash needs. ~~Renewing the small loan rather than paying the~~
 21 ~~debt in full will require additional finance charges.~~ The cost of your
 22 small loan may be higher than loans offered by other lending
 23 institutions. Small loans are regulated by the State of Indiana
 24 Department of Financial Institutions.

25 A ~~consumer~~ **borrower** may rescind a small loan without cost not
 26 later than the end of the business day immediately following the day
 27 on which the small loan was made. To rescind a small loan, a
 28 ~~consumer~~ **borrower** must inform the lender that the ~~consumer~~
 29 **borrower** wants to rescind the small loan, and the ~~consumer~~
 30 **borrower** must return the cash amount of the principal of the small
 31 loan to the lender."

32 (3) The statement required in subsection (2) must be in:
 33 (a) 14 point bold face type in the loan documents; and
 34 (b) not less than one (1) inch bold print in the lending area of the
 35 business location.

36 **(4) When a borrower enters into a small loan, the lender shall**
 37 **provide the borrower with a pamphlet approved by the department**
 38 **that describes:**

39 **(a) the availability of debt management and credit counseling**
 40 **services; and**

41 **(b) the borrower's rights and responsibilities in the**
 42 **transaction.**

43 SECTION 26. IC 24-4.5-7-401, AS AMENDED BY P.L.258-2003,
 44 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 45 JULY 1, 2004]: Sec. 401. (1) ~~Except as provided in subsection (2);~~ A
 46 small loan may not be made for a term of less than fourteen (14) days.

47 (2) After the ~~consumer's third~~ **borrower's fifth** consecutive small
 48 loan, another small loan may not be made to that ~~consumer~~ **borrower**
 49 within seven (7) days after the **due** date of the ~~third~~ **fifth** consecutive

1 small loan. ~~unless the new small loan is for a term of twenty-eight (28)~~
 2 ~~days or longer. After the borrower's fifth consecutive small loan,~~
 3 **the balance must be paid in full. However, the borrower and**
 4 **lender may agree to enter into a simple interest loan, payable in**
 5 **installments, under IC 24-4.5-3 within seven (7) days after the**
 6 **due date of the fifth consecutive small loan.**

7 SECTION 27. IC 24-4.5-7-402, AS ADDED BY P.L.38-2002,
 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2004]: Sec. 402. (1) A lender is prohibited from making a
 10 small loan to a ~~consumer borrower~~ if the total payable amount of the
 11 small loan exceeds ~~twenty fifteen percent (20%)~~ **(15%)** of the
 12 ~~consumer's borrower's~~ monthly ~~net gross~~ income.

13 (2) A small loan may be secured by only one (1) check or ~~electronic~~
 14 **authorization to debit the borrower's account** per small loan. The
 15 check or electronic debit may not exceed the amount advanced to or on
 16 behalf of the ~~consumer borrower~~ plus loan finance charges contracted
 17 for and permitted.

18 (3) A ~~consumer borrower~~ may make partial payments in any amount
 19 on the small loan without charge at any time before the due date of the
 20 small loan. After each payment is made on a small loan, whether the
 21 payment is in part or in full, the lender shall give a signed and dated
 22 receipt to the ~~consumer borrower~~ making a payment showing the
 23 amount paid and the balance due on the small loan.

24 (4) The lender shall provide to each ~~consumer borrower~~ a copy of
 25 the required loan documents before the disbursement of the loan
 26 proceeds.

27 (5) A ~~consumer borrower~~ may rescind a small loan without cost not
 28 later than the end of the business day immediately following the day on
 29 which the small loan was made. To rescind a small loan, a ~~consumer~~
 30 **borrower** must:

- 31 (a) inform the lender that the ~~consumer borrower~~ wants to rescind
 32 the small loan; and
 33 (b) return the cash amount of the principal of the small loan to the
 34 lender.

35 **(6) A lender shall not enter into a renewal with a borrower. If a**
 36 **loan is paid in full, a subsequent loan is not a renewal.**

37 SECTION 28. IC 24-4.5-7-404, AS ADDED BY P.L.38-2002,
 38 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2004]: Sec. 404. (1) **As used in this section, "commercially**
 40 **reasonable method of verification" means one (1) or more private**
 41 **consumer credit reporting services that the department**
 42 **determines to be capable of providing a lender with adequate**
 43 **verification information necessary to ensure compliance with**
 44 **subsection (4).**

45 (2) With respect to a small loan, ~~or subsequent refinancing,~~ no lender
 46 may permit a person to become obligated under more than one (1) loan
 47 agreement with the lender at any time.

48 ~~(2)~~ (3) A lender shall not make a small loan ~~or subsequent refinancing~~

1 that, when combined with another outstanding small loan owed to
 2 another lender, exceeds a total of ~~four~~ **five** hundred dollars (~~\$400~~)
 3 **(\$500)** when the face amounts of the checks written **or debits**
 4 **authorized** in connection with each loan are combined into a single
 5 sum. A lender shall not make a small loan to a ~~consumer borrower~~ who
 6 has two (2) or more small loans outstanding, regardless of the total
 7 value of the small loans.

8 ~~(3)~~ **(4)** A lender complies with subsection ~~(2)~~ **(3)** if the ~~consumer~~
 9 **borrower** represents in writing that the ~~consumer borrower~~ does not
 10 have any outstanding small loans with the lender, ~~or with any other~~
 11 **another lender, an affiliate of the lender or another lender, or a**
 12 **separate entity involved in a business association with the lender**
 13 **or another lender in making small loans**, and the lender
 14 independently verifies the accuracy of the ~~consumer's borrower's~~
 15 written representation through a commercially reasonable ~~means~~.
 16 **method of verification**. A lender's method of verifying whether a
 17 ~~consumer borrower~~ has any outstanding small loans will be considered
 18 commercially reasonable if the method includes a manual investigation
 19 or an electronic query of:

20 (a) the lender's own records, including both records maintained at
 21 the location where the ~~consumer borrower~~ is applying for the
 22 transaction and records maintained at other locations within the
 23 state that are owned and operated by the lender; and

24 (b) available ~~department approved~~ **third party** databases.

25 **(5) The department shall monitor the effectiveness of private**
 26 **consumer credit reporting services in providing the verification**
 27 **information required under subsection (4). If the department**
 28 **determines that one (1) or more commercially reasonable**
 29 **methods of verification are available, the department shall:**

30 (a) **provide reasonable notice to all lenders identifying the**
 31 **commercially reasonable methods of verification that are**
 32 **available; and**

33 (b) **require each lender to use one (1) of the identified**
 34 **commercially reasonable methods of verification as a means**
 35 **of complying with subsection (4).**

36 ~~(4)~~ **(6)** The excess amount of loan finance charge provided for in
 37 agreements in violation of this section is an excess charge for purposes
 38 of the provisions concerning effect of violations on rights of parties (IC
 39 24-4.5-5-202) and the provisions concerning civil actions by the
 40 department (IC 24-4.5-6-113).

41 SECTION 29. IC 24-4.5-7-406, AS ADDED BY P.L.38-2002,
 42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 43 JULY 1, 2004]: Sec. 406. An agreement with respect to a small loan
 44 may not provide for charges as a result of default by the ~~consumer~~
 45 **borrower** other than those authorized by this chapter. A provision in
 46 violation of this section is unenforceable.

47 SECTION 30. IC 24-4.5-7-409, AS ADDED BY P.L.38-2002,
 48 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

1 JULY 1, 2004]: Sec. 409. (1) This section applies to licensees and
2 unlicensed persons.

3 (2) **The following apply to small loans only when a check or an**
4 **authorization to debit a borrower's account is used to defraud**
5 **another person:**

6 (a) IC 26-1-3.1-502.5 (surcharge after dishonor).

7 (b) IC 26-2-7 (penalties for stopping payments or permitting
8 dishonor of checks and drafts).

9 (c) IC 34-4-30 (before its repeal).

10 (d) IC 34-24-3 ~~and~~ (treble damages allowed in certain civil
11 actions by crime victims).

12 (e) IC 35-43-5 ~~apply to small loans only when a check is used to~~
13 ~~defraud another person: (forgery, fraud, and other deceptions).~~

14 (f) IC 24-4.5-3-404 (attorney's fees) does not apply to a small
15 loan.

16 (3) A contractual agreement in a small loan transaction must include
17 the language of subsection (2) in 14 point bold type.

18 (4) A person who violates this chapter:

19 (a) is subject to a civil penalty up to ~~one~~ two thousand dollars
20 (~~\$1,000~~) (\$2,000) imposed by the department;

21 (b) is subject to the remedies provided in IC 24-4.5-5-202;

22 (c) commits a deceptive act under IC 24-5-0.5 and is subject to the
23 penalties listed in IC 24-5-0.5;

24 (d) has no right to collect, receive, or retain any principal, interest,
25 or other charges from a small loan; however, this subdivision does
26 not apply if the violation is the result of an accident or bona fide
27 error of computation; and

28 (e) is liable to the ~~consumer~~ borrower for actual damages,
29 statutory damages of ~~one~~ two thousand dollars (~~\$1,000~~) (\$2,000)
30 per violation, costs, and attorney's fees; however, this subdivision
31 does not apply if the violation is the result of an accident or bona
32 fide error of computation.

33 (5) The department may sue:

34 (a) to enjoin any conduct that constitutes or will constitute a
35 violation of this chapter; and

36 (b) for other equitable relief.

37 (6) The remedies provided in this section are cumulative but are not
38 intended to be the exclusive remedies available to a ~~consumer~~
39 **borrower**. A ~~consumer~~ borrower is not required to exhaust any
40 administrative remedies under this section or any other applicable law.

41 SECTION 31. IC 24-4.5-7-410, AS ADDED BY P.L.38-2002,
42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
43 UPON PASSAGE]: Sec. 410. A lender making small loans shall not
44 commit nor cause to be committed any of the following acts:

45 (a) Threatening to use or using the criminal process in any state to
46 collect on a small loan.

47 (b) Threatening to take action against a ~~consumer~~ borrower that is
48 prohibited by this chapter.

49 (c) Making a misleading or deceptive statement regarding a small

- 1 loan or a consequence of taking a small loan.
- 2 (d) Contracting for and collecting attorney's fees on small loans
- 3 made under this chapter.
- 4 (e) Altering the date or any other information on a check **or an**
- 5 **authorization to debit the borrower's account** held as security.
- 6 (f) Using a device or agreement that **the department determines**
- 7 would have the effect of charging or collecting more fees, charges,
- 8 or interest than allowed by this chapter, including, but not limited
- 9 to:
- 10 (i) entering a different type of transaction with the ~~consumer~~;
- 11 **borrower**;
- 12 (ii) entering into a sales/leaseback arrangement;
- 13 (iii) catalog sales; ~~or~~
- 14 (iv) **entering into transactions in which a customer receives**
- 15 **a purported cash rebate that is advanced by someone**
- 16 **offering Internet content services, or some other product or**
- 17 **service, when the cash rebate does not represent a discount**
- 18 **or an adjustment of the purchase price for the product or**
- 19 **service; or**
- 20 (v) entering any other transaction with the ~~consumer~~ **borrower**
- 21 that is designed to evade the applicability of this chapter.
- 22 (g) Engaging in unfair, deceptive, or fraudulent practices in the
- 23 making or collecting of a small loan.
- 24 (h) Charging to cash a check representing the proceeds of a small
- 25 loan.
- 26 (i) Except as otherwise provided in this chapter:
- 27 (i) accepting the proceeds of a new small loan as payment of an
- 28 existing small loan provided by the same lender; or
- 29 (ii) renewing, refinancing, or consolidating a small loan with the
- 30 proceeds of another small loan made by the same lender.
- 31 (j) Including any of the following provisions in a loan document:
- 32 (i) A hold harmless clause.
- 33 (ii) A confession of judgment clause.
- 34 (iii) A mandatory arbitration clause, unless the terms and
- 35 conditions of the arbitration have been approved by the director
- 36 of the department.
- 37 (iv) An assignment of or order for payment of wages or other
- 38 compensation for services.
- 39 (v) A provision in which the ~~consumer~~ **borrower** agrees not to
- 40 assert a claim or defense arising out of contract.
- 41 (vi) A waiver of any provision of this chapter.
- 42 (k) Selling insurance of any kind in connection with the making or
- 43 collecting of a small loan.
- 44 **(l) Entering into a renewal with a borrower.**
- 45 SECTION 32. IC 24-4.5-7-412, AS ADDED BY P.L.38-2002,
- 46 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 47 JULY 1, 2004]: Sec. 412. Upon the receipt of a check from a ~~consumer~~
- 48 **borrower** for a small loan, the lender shall immediately stamp the back
- 49 of the check with an endorsement that states:

1 "This check is being negotiated as part of a small loan under
 2 IC 24-4.5, and any holder of this check takes it subject to the
 3 claims and defenses of the maker."

4 SECTION 33. IC 24-9 IS ADDED TO THE INDIANA CODE AS A
 5 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY
 6 1, 2005]:

7 **ARTICLE 9. HOME LOAN PRACTICES**

8 **Chapter 1. Application**

9 **Sec. 1. Except for IC 24-9-3-7(3), this article does not apply to:**

10 (1) a loan made or acquired by a person organized or chartered
 11 under the laws of this state, any other state, or the United
 12 States relating to banks, trust companies, savings
 13 associations, savings banks, credit unions, or industrial loan
 14 and investment companies; or

15 (2) a loan:

16 (A) that can be purchased by the Federal National Mortgage
 17 Association, the Federal Home Loan Mortgage Association,
 18 or the Federal Home Loan Bank;

19 (B) to be insured by the United States Department of
 20 Housing and Urban Development;

21 (C) to be guaranteed by the United States Department of
 22 Veterans Affairs;

23 (D) to be made or guaranteed by the United States
 24 Department of Agriculture Rural Housing Service;

25 (E) to be funded by the Indiana housing finance authority;
 26 or

27 (F) with a principal amount that exceeds the conforming
 28 loan size limit for a single family dwelling as established by
 29 the Federal National Mortgage Association.

30 **Chapter 2. Definitions**

31 **Sec. 1. The definitions in this chapter apply throughout this**
 32 **article.**

33 **Sec. 2. "Benchmark rate" means the interest rate established**
 34 **under Section 152 of the Federal Home Ownership and Equity**
 35 **Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the regulations**
 36 **adopted under that act by the Federal Reserve Board, including 12**
 37 **CFR 226.32 and the Official Staff Commentary to the regulations**
 38 **as amended.**

39 **Sec. 3. "Bona fide discount points" means loan discount points**
 40 **that:**

41 (1) are knowingly paid by the borrower;

42 (2) are paid for the express purpose of reducing the interest
 43 rate applicable to the loan;

44 (3) reduce the interest rate from an interest rate that does
 45 not exceed the benchmark rate; and

46 (4) are recouped within the first four (4) years of the
 47 scheduled loan payments;

1 if the reduction in the interest rate that is achieved by the
 2 payment of the loan discount points reduces the interest charged
 3 on the scheduled payments so that the borrower's dollar amount
 4 of savings in interest during the first four (4) years of the loan is
 5 equal to or greater than the dollar amount of loan discount points
 6 paid by the borrower.

7 **Sec. 4. "Borrower" means a person obligated to repay a home**
 8 **loan, including a coborrower, cosigner, or guarantor.**

9 **Sec. 5. "Bridge loan" means temporary or short term financing**
 10 **with a maturity of less than eighteen (18) months that requires**
 11 **payments of interest only until the entire unpaid balance is due**
 12 **and payable.**

13 **Sec. 6. (a) "Creditor" means:**

14 **(1) a person:**

15 **(A) who regularly extends consumer credit that is subject to**
 16 **a finance charge or that is payable by written agreement in**
 17 **more than four (4) installments; and**

18 **(B) to whom the debt arising from a home loan transaction**
 19 **is initially payable; or**

20 **(2) a person who brokers a home loan, including a person who:**

21 **(A) directly or indirectly solicits, processes, places, or**
 22 **negotiates home loans for others;**

23 **(B) offers to solicit, process, place, or negotiate home loans**
 24 **for others; or**

25 **(C) closes home loans that may be in the person's own name**
 26 **with funds provided by others and that are thereafter**
 27 **assigned to the person providing funding for the loans.**

28 **(b) The term does not include:**

29 **(1) a servicer;**

30 **(2) a state or local housing finance authority;**

31 **(3) any other state or local governmental or**
 32 **quasi-governmental entity; or**

33 **(4) an attorney providing legal services in association with the**
 34 **closing of a home loan.**

35 **Sec. 7. (a) "Deceptive act" means an act or a practice as part of**
 36 **a consumer credit mortgage transaction involving real property**
 37 **located in Indiana in which a person at the time of the transaction**
 38 **knowingly or intentionally:**

39 **(1) makes a material misrepresentation; or**

40 **(2) conceals material information regarding the terms or**
 41 **conditions of the transaction.**

42 **(b) For purposes of this section, "knowingly" means having**
 43 **actual knowledge at the time of the transaction.**

44 **Sec. 8. (a) "High cost home loan" means a home loan with:**

45 **(1) a trigger rate that exceeds the benchmark rate; or**

46 **(2) total points and fees that exceed:**

47 **(A) five percent (5%) of the loan principal for a home loan**

1 having a loan principal of at least forty thousand dollars
 2 (\$40,000); or
 3 **(B) six percent (6%) of the loan principal for a home loan**
 4 **having a loan principal of less than forty thousand dollars**
 5 **(\$40,000).**

6 **(b) Beginning July 1, 2006, the dollar amounts set forth in this**
 7 **section are subject to change at the times and according to the**
 8 **procedure set forth in the provisions of IC 24-4.5-1-106**
 9 **concerning the adjustment of dollar amounts in IC 24-4.5.**

10 **Sec. 9. "Home loan" means a loan, other than an open end**
 11 **credit plan or a reverse mortgage transaction, that is secured by**
 12 **a mortgage or deed of trust on real estate in Indiana on which**
 13 **there is located or will be located a structure or structures:**

14 **(1) designed primarily for occupancy of one (1) to four (4)**
 15 **families; and**

16 **(2) that is or will be occupied by a borrower as the borrower's**
 17 **principal dwelling.**

18 **Sec. 10. (a) Except as provided in subsection (b), "points and**
 19 **fees" means the total of the following:**

20 **(1) Points and fees (as defined in 12 CFR 226.32(b)(1) on**
 21 **January 1, 2004).**

22 **(2) All compensation paid directly or indirectly to a mortgage**
 23 **broker, including a broker that originates a loan in the**
 24 **broker's own name.**

25 **As used in subdivision (2), "compensation" does not include a**
 26 **payment included in subdivision (1).**

27 **(b) The term does not include the following:**

28 **(1) Bona fide discount points.**

29 **(2) An amount not to exceed one and one-half (1 1/2) points in**
 30 **indirect broker compensation, if the terms of the loan do not**
 31 **include a prepayment penalty that exceeds two percent (2%)**
 32 **of the home loan principle.**

33 **(3) Reasonable fees paid to an affiliate of the creditor.**

34 **(4) Interest prepaid by the borrower for the month in which**
 35 **the home loan is closed.**

36 **Sec. 11. "Political subdivision" means a municipality, school**
 37 **district, public library, local housing authority, fire protection**
 38 **district, public transportation corporation, local building authority,**
 39 **local hospital authority or corporation, local airport authority,**
 40 **special service district, special taxing district, or any other type of**
 41 **local governmental corporate entity.**

42 **Sec. 12. "Rate" means the interest rate charged on a home**
 43 **loan, based on an annual simple interest yield.**

44 **Sec. 13. "Total loan amount" means the principal of the home**
 45 **loan minus the points and fees that are included in the principal**
 46 **amount of the loan.**

47 **Sec. 14. "Trigger rate" means:**

- 1 (1) for fixed rate home loans in which the interest rate will not
2 vary during the term of the loan, the rate as of the date of
3 closing;
4 (2) for home loans in which the interest varies according to an
5 index, the sum of the index rate as of the date of closing plus
6 the maximum margin permitted at any time under the loan
7 agreement; or
8 (3) for all other home loans in which the rate may vary at any
9 time during the term of the loan, the maximum rate that may
10 be charged during the term of the home loan.

11 **Chapter 3. Prohibited Lending Practices Generally**

12 **Sec. 1. (a) A creditor making a home loan may not finance,**
13 **directly or indirectly, any:**

- 14 (1) credit life insurance;
15 (2) credit disability insurance;
16 (3) credit unemployment insurance;
17 (4) credit property insurance; or
18 (5) payments directly or indirectly for any cancellation
19 suspension agreement or contract.

20 (b) Insurance premiums, debt cancellation fees, or suspension
21 fees calculated and paid on a monthly basis are not considered to
22 be financed by the creditor for purposes of this chapter.

23 Sec. 2. (a) A creditor may not knowingly or intentionally replace
24 or consolidate a zero (0) interest rate or other subsidized low rate
25 loan made by a governmental or nonprofit lender with a high cost
26 home loan within the first ten (10) years of the subsidized low rate
27 loan unless the current holder of the loan consents in writing to
28 the refinancing.

29 (b) For purposes of this section, a "subsidized low rate loan" is
30 a loan that carries a current interest rate of at least two (2)
31 percentage points below the current yield on treasury securities
32 with a comparable maturity. If the loan's current interest rate is
33 either a discounted introductory rate or a rate that automatically
34 steps up over time, the fully indexed rate or the fully stepped up
35 rate, as appropriate, should be used instead of the current rate to
36 determine whether a loan is a subsidized low rate loan.

37 (c) Each mortgage or deed of trust securing a zero (0) interest
38 rate or other subsidized low rate loan executed after January 1,
39 2005, must prominently display the following on the face of the
40 instrument:

41 "This instrument secures a zero (0) interest rate or other
42 subsidized low rate loan subject to IC 24-9-3-2."

43 (d) A creditor may reasonably rely on the presence or absence
44 of the statement described in subsection (c) on the face of an
45 instrument executed after January 1, 2005, as conclusive proof of
46 the existence or nonexistence of a zero (0) interest rate or other
47 subsidized low rate loan.

1 **Sec. 3. A creditor may not recommend or encourage default on**
 2 **an existing loan or other debt before and in connection with the**
 3 **closing or planned closing of a home loan that refinances all or**
 4 **part of the existing loan or debt.**

5 **Sec. 4. A creditor shall treat each payment made by a borrower**
 6 **in regard to a home loan as posted on the same business day as**
 7 **the payment was received by the creditor, servicer, or creditor's**
 8 **agent, or at the address provided to the borrower by the creditor,**
 9 **servicer, or creditor's agent for making payments.**

10 **Sec. 5. (a) A home loan agreement may not contain a provision**
 11 **that permits the creditor, in the creditor's sole discretion, to**
 12 **accelerate the indebtedness without material cause.**

13 **(b) This section does not prohibit acceleration of a home loan in**
 14 **good faith due to the borrower's failure to abide by the material**
 15 **terms of the loan.**

16 **Sec. 6. (a) A creditor may not charge a fee for informing or**
 17 **transmitting to a person the balance due to pay off a home loan or**
 18 **to provide a written release upon prepayment. A creditor must**
 19 **provide a payoff balance not later than ten (10) business days**
 20 **after the request is received by the creditor.**

21 **(b) For purposes of this section, "fee" does not include actual**
 22 **charges incurred by a creditor for express or priority delivery**
 23 **requested by the borrower of home loan documents to the**
 24 **borrower.**

25 **Sec. 7. A person may not:**

26 **(1) divide a loan transaction into separate parts with the**
 27 **intent of evading a provision of this article;**

28 **(2) structure a home loan transaction as an open-end loan**
 29 **with the intent of evading the provisions of this article if the**
 30 **loan would be a high cost home loan if the home loan had been**
 31 **structured as a closed-end loan; or**

32 **(3) engage in a deceptive act in connection with a home loan.**

33 **Sec. 8. A person seeking to enforce section 7(3) of this chapter,**
 34 **may not knowingly or intentionally intimidate, coerce, or harass**
 35 **another person.**

36 **Sec. 9. It is unlawful for a creditor to discriminate against any**
 37 **applicant with respect to any aspect of a credit transaction on the**
 38 **basis of race, color, religion, national origin, sex, marital status,**
 39 **or age, if the applicant has the ability to contract.**

40 **Chapter 4. Additional Prohibitions for High Cost Home Loans**

41 **Sec. 1. The following additional limitations and prohibited**
 42 **practices apply to a high cost home loan:**

43 **(1) A creditor making a high cost home loan may not directly**
 44 **or indirectly finance any points and fees.**

45 **(2) Prepayment fees or penalties may not be included in the**
 46 **loan documents for a high cost home loan or charged to the**
 47 **borrower if the fees or penalties exceed in total two percent**

1 (2%) of the high cost home loan amount prepaid during the
2 first twenty-four (24) months after the high cost home loan
3 closing.

4 (3) A prepayment penalty may not be contracted for after the
5 second year following the high cost home loan closing.

6 (4) A creditor may not include a prepayment penalty fee in a
7 high cost home loan unless the creditor offers the borrower
8 the option of choosing a loan product without a prepayment
9 fee. The terms of the offer must be made in writing and must
10 be initialed by the borrower. The document containing the
11 offer must be clearly labeled in large bold type and must
12 include the following disclosure:

13 "LOAN PRODUCT CHOICE

14 I was provided with an offer to accept a product both with
15 and without a prepayment penalty provision. I have chosen
16 to accept the product with a prepayment penalty."

17 (5) A creditor shall not sell or otherwise assign a high cost
18 home loan without furnishing the following statement to the
19 purchaser or assignee:

20 "NOTICE: This is a loan subject to special rules under
21 IC 24-9. Purchasers or assignees may be liable for all claims
22 and defenses with respect to the loan that the borrower
23 could assert against the lender."

24 (6) A mortgage or deed of trust that secures a high cost home
25 loan at the time the mortgage or deed of trust is recorded
26 must prominently display the following on the face of the
27 instrument:

28 "This instrument secures a high cost home loan as defined
29 in IC 24-9-2-8."

30 (7) A creditor making a high cost home loan may not finance,
31 directly or indirectly, any life or health insurance.

32 **Sec. 2. A creditor may not knowingly or intentionally:**

33 (1) refinance a high cost home loan by charging points and
34 fees on the part of the proceeds of the new high cost home
35 loan that is used to refinance the existing high cost loan
36 within four (4) years of the origination of the existing high
37 cost home loan; or

38 (2) divide a home loan transaction into multiple transactions
39 with the effect of evading this article. Where multiple
40 transactions are involved, the total points and fees charged in
41 all transactions shall be considered when determining whether
42 the protections of this section apply.

43 **Sec. 3. Notwithstanding IC 24-4.5-3-402, a high cost home loan**
44 **agreement may not require a scheduled payment that is more**
45 **than twice as large as the average of earlier scheduled monthly**
46 **payments under the high cost home loan agreement unless the**
47 **payment becomes due and payable at least one hundred twenty**

1 (120) months after the date of the high cost home loan. This
2 prohibition does not apply if:

- 3 (1) the payment schedule is adjusted to account for the
4 seasonal or irregular income of the borrower; or
5 (2) the loan is a bridge loan connected with or related to the
6 acquisition or construction of a dwelling intended to become
7 the borrower's principal dwelling.

8 Sec. 4. (a) Except as provided in subsection (b), a high cost home
9 loan may not include payment terms under which the outstanding
10 principal balance will increase at any time over the course of the
11 high cost home loan because the regular periodic payments do not
12 cover the full amount of interest due.

13 (b) This section does not apply to a temporary forbearance that
14 is requested by a borrower regarding a high cost home loan.

15 Sec. 5. A high cost home loan may not contain a provision that
16 increases the interest rate after default. However, this section
17 does not apply to interest rate changes in a variable rate loan
18 otherwise consistent with the provisions of the high cost home
19 loan documents if the change in the interest rate is not triggered
20 by the event of default or the acceleration of the indebtedness.

21 Sec. 6. A high cost home loan may not include terms under
22 which more than two (2) periodic payments required under the
23 high cost home loan are consolidated and paid in advance from the
24 high cost home loan proceeds provided to the borrower.

25 Sec. 7. A creditor may not make a high cost home loan without
26 first providing the borrower information to facilitate contact with
27 a nonprofit counseling agency certified by:

- 28 (1) the United States Department of Housing and Urban
29 Development; or
30 (2) the department of commerce under IC 4-4-3-8(b)(15);

31 at the same time as the good faith estimates are provided to the
32 borrower in accordance with the requirements of the federal Real
33 Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as
34 amended.

35 Sec. 8. (a) A creditor may not make a high cost home loan
36 without regard to repayment ability.

37 (b) If a creditor presents evidence that the creditor followed
38 commercially reasonable practices in determining the borrower's
39 debt to income ratio, there is a rebuttable presumption that the
40 creditor made the high cost home loan with due regard to
41 repayment ability. For purposes of this section, there is a
42 rebuttable presumption that the borrower's statement of income
43 provided to the creditor is true and complete.

44 (c) Commercially reasonable practices include the use of:

- 45 (1) the debt to income ratio:
46 (A) listed in 38 CFR 36.4337(c)(1); and
47 (B) defined in 38 CFR 36.4337(d); and

1 **YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN**
 2 **AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED**
 3 **THIS DISCLOSURE OR HAVE SIGNED A LOAN**
 4 **APPLICATION. REMEMBER, PROPERTY TAXES AND**
 5 **HOMEOWNER'S INSURANCE ARE YOUR**
 6 **RESPONSIBILITY. NOT ALL CREDITORS PROVIDE**
 7 **ESCROW SERVICES FOR THESE PAYMENTS. YOU**
 8 **SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.**
 9 **ALSO, YOUR PAYMENTS ON EXISTING DEBTS**
 10 **CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD**
 11 **NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR**
 12 **PAYMENTS TO YOUR EXISTING CREDITORS."**

13 **Sec. 12. Without regard to whether a borrower is acting**
 14 **individually or on behalf of others similarly situated, a provision**
 15 **of a high cost home loan agreement that:**

- 16 **(1) requires arbitration of a claim or defense;**
 17 **(2) allows a party to require a borrower to assert a claim or**
 18 **defense in a forum that is:**
 19 **(A) less convenient;**
 20 **(B) more costly; or**
 21 **(C) more dilatory;**
 22 **for the resolution of the dispute than an Indiana court in**
 23 **which the borrower may otherwise bring a claim or defense;**
 24 **or**
 25 **(3) limits in any way any claim or defense the borrower may**
 26 **have;**

27 **is unconscionable and void.**

28 **Chapter 5. Claims, Defenses, Remedies**

29 **Sec. 1. (a) A person who purchases or is otherwise assigned a**
 30 **high cost home loan is subject to all affirmative claims and any**
 31 **defenses with respect to the high cost home loan that the**
 32 **borrower could assert against a creditor or broker of the high cost**
 33 **home loan. However, this section does not apply if the purchaser**
 34 **or assignee demonstrates by a preponderance of the evidence that**
 35 **a reasonable person exercising ordinary due diligence could not**
 36 **determine that the loan was a high cost home loan. A purchaser**
 37 **or an assignee is presumed to have exercised reasonable due**
 38 **diligence if the purchaser or assignee:**

- 39 **(1) has in place at the time of the purchase or assignment of**
 40 **the subject loans, policies that expressly prohibit the purchase**
 41 **or acceptance of the assignment of any high cost home loans;**
 42 **(2) requires by contract that a seller or an assignor of home**
 43 **loans to the purchaser or assignee represents and warrants to**
 44 **the purchaser or assignee that either:**
 45 **(A) the seller or assignor will not sell or reassign any high**
 46 **cost home loans to the purchaser or assignee; or**
 47 **(B) the seller or assignor is a beneficiary of a representation**

- 1 and warranty from a previous seller or assignor to that
2 effect;
- 3 **(3) exercises reasonable due diligence:**
- 4 **(A) at the time of purchase or assignment of home loans; or**
5 **(B) within a reasonable period after the purchase or**
6 **assignment of home loans;**
- 7 intended by the purchaser or assignee to prevent the
8 purchaser or assignee from purchasing or taking assignment
9 of any high cost home loans; or
- 10 **(4) satisfies the requirements of subdivisions (1) and (2) and**
11 **establishes that a reasonable person exercising ordinary due**
12 **diligence could not determine that the loan was a high cost**
13 **home loan based on the:**
- 14 **(A) documentation required by the federal Truth in Lending**
15 **Act (15 U.S.C. 1601 et seq.); and**
- 16 **(B) itemization of the amount financed and other**
17 **disbursement disclosures.**
- 18 **(b) A borrower acting only in an individual capacity may assert**
19 **against the creditor or any subsequent holder or assignee of a**
20 **high cost home loan:**
- 21 **(1) a violation of IC 24-9-4-2 as a defense, claim, or**
22 **counterclaim, after:**
- 23 **(A) an action to enjoin foreclosure or to preserve or obtain**
24 **possession of the dwelling that secures the loan is initiated;**
25 **(B) an action to collect on the loan or foreclose on the**
26 **collateral securing the loan is initiated; or**
27 **(C) the loan is more than sixty (60) days in default;**
28 **within three (3) years after the closing of a home loan;**
- 29 **(2) a violation of this article in connection to the high cost**
30 **home loan as a defense, claim, or counterclaim in an original**
31 **action within five (5) years after the closing of a high cost**
32 **home loan; and**
- 33 **(3) any defense, claim, counterclaim, or action to enjoin**
34 **foreclosure or preserve or obtain possession of the home that**
35 **secures the loan, including a violation of this article after:**
- 36 **(A) an action to collect on the loan or foreclose on the**
37 **collateral securing the loan is initiated;**
38 **(B) the debt arising from the loan is accelerated; or**
39 **(C) the loan is more than sixty (60) days in default;**
40 **at any time during the term of a high cost home loan.**
- 41 **(c) In an action, a claim, or a counterclaim brought under**
42 **subsection (b), the borrower may recover only amounts required**
43 **to reduce or extinguish the borrower's liability under a home loan**
44 **plus amounts required to recover costs, including reasonable**
45 **attorney's fees.**
- 46 **(d) The provisions of this section are effective notwithstanding**
47 **any other provision of law. This section shall not be construed to**

1 limit the substantive rights, remedies, or procedural rights
2 available to a borrower against any creditor, assignee, or holder
3 under any other law. The rights conferred on borrowers by
4 subsections (a) and (b) are independent of each other and do not
5 limit each other.

6 Sec. 2. (a) If a creditor asserts that grounds for acceleration
7 under the terms of a high cost home loan exist and requires the
8 payment in full of all sums secured by the security instrument,
9 the borrower or a person authorized to act on the borrower's
10 behalf at any time before the title is transferred by means of
11 foreclosure, judicial proceeding and sale, or otherwise may cure
12 the default and reinstate the high cost home loan by tendering the
13 amount or performance as specified in the security instrument.

14 (b) If the borrower cures the default on a high cost home loan,
15 the original loan terms shall be reinstated, and any acceleration
16 of any obligation under the security instrument or note arising
17 from the default is nullified as of the date of the cure.

18 Sec. 3. (a) A creditor making a high cost home loan that has the
19 right to foreclose must use the judicial foreclosure procedures of
20 the state in which the property securing the high cost home loan
21 is located. The borrower has the right to assert in the proceeding
22 the nonexistence of a default and any other claim or defense to
23 acceleration and foreclosure, including any claim or defense based
24 on any violations of this article.

25 (b) This section is not intended and shall not be construed to
26 allow any claim or defense otherwise barred by any statute of
27 limitation or repose.

28 Sec. 4. (a) A person who violates this article is liable to a person
29 who is a party to the home loan transaction that gave rise to the
30 violation for the following:

31 (1) Actual damages, including consequential damages. A
32 person is not required to demonstrate reliance in order to
33 receive actual damages.

34 (2) Statutory damages equal to two (2) times the finance
35 charges agreed to in the home loan agreement.

36 (3) Costs and reasonable attorney's fees.

37 (b) A person may be granted injunctive, declaratory, and other
38 equitable relief as the court determines appropriate in an action
39 to enforce compliance with this chapter.

40 (c) The right of rescission granted under 15 U.S.C. 1601 et seq.
41 for a violation of law is available to a person acting only in an
42 individual capacity by way of recoupment as a defense against a
43 party foreclosing on a home loan at any time during the term of
44 the loan. Any recoupment claim asserted under this provision is
45 limited to the amount required to reduce or extinguish the
46 person's liability under the home loan plus amounts required to
47 recover costs, including reasonable attorney's fees. This article

1 shall not be construed to limit the recoupment rights available to
2 a person under any other law.

3 (d) The remedies provided in this section are cumulative but are
4 not intended to be the exclusive remedies available to a person.
5 Except as provided in subsection (e), a person is not required to
6 exhaust any administrative remedies under this article or under
7 any other applicable law.

8 (e) Before bringing an action regarding an alleged deceptive act
9 under this chapter, a person must:

10 (1) notify the homeowner protection unit established by
11 IC 4-6-12-2 of the alleged violation giving rise to the action;
12 and

13 (2) allow the homeowner protection unit at least ninety (90)
14 days to institute appropriate administrative and civil action to
15 redress a violation.

16 (f) An action under this chapter must be brought within five (5)
17 years after the date that the person knew, or by the exercise of
18 reasonable diligence should have known, of the violation of this
19 article.

20 (g) An award of damages under subsection (a) has priority over
21 a civil penalty imposed under this article.

22 Sec. 5. (a) If the creditor or an assignee establishes by a
23 preponderance of evidence that a violation of this article is
24 unintentional or the result of a bona fide error of law or fact
25 notwithstanding the maintenance of procedures reasonably
26 adopted to avoid any such violation or error, the validity of the
27 transaction is not affected, and no liability is imposed under
28 section 4 of this chapter except in the case of a refusal to make a
29 refund.

30 (b) Except as provided in subsection (c), a creditor in a high cost
31 home loan who in good faith fails to comply with this article is not
32 considered to have violated this article if the creditor does the
33 following before receiving notice of the failure from the borrower:

34 (1) Not later than ninety (90) days after the date of the loan
35 closing:

36 (A) makes appropriate restitution to the borrower of any
37 amounts collected in error; and

38 (B) takes necessary action to make all appropriate
39 adjustments to the loan to correct the error.

40 (2) Not later than one hundred twenty (120) days after the
41 date of the loan closing, notifies the borrower of:

42 (A) the error; and

43 (B) the amount of the required restitution or adjustment.

44 (c) Subsection (b) does not apply unless the creditor establishes
45 that the compliance failure was not intentional and resulted from
46 a bona fide error of fact or law, notwithstanding the maintenance
47 of procedures reasonably adopted to avoid the errors.

1 **Sec. 6. The rights conferred by this article are in addition to**
 2 **rights granted under any other law.**

3 **Chapter 6. Reporting Requirements**

4 **Sec. 1. (a) A servicer of a high cost home loan shall report at**
 5 **least once each calendar quarter to a nationally recognized**
 6 **consumer credit reporting agency both the favorable and**
 7 **unfavorable payment history information of the borrower on**
 8 **payments due to the creditor on a high cost home loan.**

9 **(b) This section does not prohibit a servicer from agreeing with**
 10 **the borrower not to report specified payment history information**
 11 **in the event of a resolved or an unresolved dispute with a**
 12 **borrower and does not apply to high cost home loans held or**
 13 **serviced by a lender for less than ninety (90) days.**

14 **Chapter 7. State Power to Regulate Lending**

15 **Sec. 1. The state is the sole regulator of the business of**
 16 **originating, granting, servicing, and collecting loans and other**
 17 **forms of credit in Indiana and the manner in which the business**
 18 **is conducted. This regulation preempts all other regulation of**
 19 **these activities by any political subdivision.**

20 **Sec. 2. Political subdivisions may not:**

21 **(1) enact, issue, or enforce ordinances, resolutions,**
 22 **regulations, orders, requests for proposals, or requests for**
 23 **bids pertaining to financial or lending activities, including**
 24 **ordinances, resolutions, and rules that disqualify persons from**
 25 **doing business with a municipality and that are based upon**
 26 **lending terms or practices; or**

27 **(2) impose reporting requirements or any other obligations**
 28 **upon persons regarding financial services or lending practices**
 29 **or upon subsidiaries or affiliates that:**

30 **(A) are subject to the jurisdiction of the department of**
 31 **financial institutions;**

32 **(B) are subject to the jurisdiction or regulatory supervision**
 33 **of the Board of Governors of the Federal Reserve System,**
 34 **the Office of the Comptroller of the Currency, the Office of**
 35 **Thrift Supervision, the National Credit Union**
 36 **Administration, the Federal Deposit Insurance Corporation,**
 37 **the Federal Trade Commission, or the United States**
 38 **Department of Housing and Urban Development;**

39 **(C) are chartered by the United States Congress to engage**
 40 **in secondary market mortgage transactions;**

41 **(D) are created by the Indiana housing finance authority; or**

42 **(E) originate, purchase, sell, assign, securitize, or service**
 43 **property interests or obligations created by financial**
 44 **transactions or loans made, executed, originated, or**
 45 **purchased by persons referred to in clauses (A), (B), (C), or**
 46 **(D).**

47 **Chapter 8. Penalties and Enforcement**

1 **Sec. 1. A person who knowingly or intentionally violates this**
 2 **article commits:**

3 **(1) a Class A misdemeanor; and**

4 **(2) an act that is actionable by the attorney general under**
 5 **IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.**

6 **Sec. 2. (a) Beginning July 1, 2005, the attorney general and the**
 7 **attorney general's homeowner protection unit established under**
 8 **IC 4-6-12 shall enforce this article for any violation occurring**
 9 **within five (5) years after the making of a home loan.**

10 **(b) The attorney general may refer a matter under section 1 of**
 11 **this chapter to a prosecuting attorney for enforcement.**

12 **Sec. 3. (a) The attorney general may bring an action to enjoin a**
 13 **violation of this article. A court in which the action is brought**
 14 **may:**

15 **(1) issue an injunction;**

16 **(2) order a person to make restitution;**

17 **(3) order a person to reimburse the state for reasonable costs**
 18 **of the attorney general's investigation and prosecution of the**
 19 **violation of this article; and**

20 **(4) impose a civil penalty of not more than ten thousand**
 21 **dollars (\$10,000) per violation.**

22 **(b) A person who violates an injunction under this section is**
 23 **subject to a civil penalty of not more than ten thousand dollars**
 24 **(\$10,000) per violation.**

25 **(c) The court that issues an injunction retains jurisdiction over**
 26 **a proceeding seeking the imposition of a civil penalty under this**
 27 **section.**

28 **Sec. 4. The attorney general may file complaints with any of the**
 29 **agencies listed in IC 4-6-12-4 to implement this chapter.**

30 **Chapter 9. Fees**

31 **Sec. 1. The county recorder shall assess a fee of three dollars**
 32 **(\$3) under IC 36-2-7-10(b)(11) for each mortgage recorded. The**
 33 **fee shall be paid to the county treasurer at the end of each**
 34 **calendar month as provided in IC 36-2-7-10(a).**

35 **Sec. 2. The county auditor shall credit fifty cents (\$0.50) of the**
 36 **fee collected under IC 36-2-7-10(b)(11) for each mortgage**
 37 **recorded to the county recorder's records perpetuation fund**
 38 **established under IC 36-2-7-10(c).**

39 **Sec. 3. On or before June 20 and December 20 of each year,**
 40 **after completing an audit of the county treasurer's monthly**
 41 **reports required by IC 36-2-10-16, the county auditor shall**
 42 **distribute to the auditor of state two dollars and fifty cents (\$2.50)**
 43 **of the mortgage recording fee collected under IC 36-2-7-10(b)(11)**
 44 **for each mortgage recorded by the county recorder. The auditor**
 45 **of state shall deposit the money in the state general fund to be**
 46 **distributed as described in section 4 of this chapter.**

47 **Sec. 4. On or before June 30 and December 31 of each year the**

1 **auditor of state shall distribute one dollar and twenty-five cents**
 2 **(\$1.25) of the mortgage recording fee to the home ownership**
 3 **education account established by IC 4-4-3-23 and one dollar and**
 4 **twenty-five cents (\$1.25) of the mortgage recording fee to the**
 5 **homeowner protection unit account established by IC 4-6-12-9.**

6 SECTION 34. IC 28-1-11-3.2 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.2. (a) As used in this
 8 section, "rights and privileges" means the power:

9 (1) to:

10 ~~(1)~~ (A) create;

11 ~~(2)~~ (B) deliver;

12 ~~(3)~~ (C) acquire; or

13 ~~(4)~~ (D) sell;

14 a product, a service, or an investment that is available to or offered
 15 by; **or**

16 **(2) to engage in other activities authorized for;**

17 national banks domiciled in Indiana.

18 (b) A bank that intends to exercise any rights and privileges that are:

19 (1) granted to national banks; but

20 (2) not authorized for banks under the Indiana Code (except for
 21 this section) or any rule adopted under the Indiana Code;

22 shall submit a letter to the department describing in detail the requested
 23 rights and privileges granted to national banks that the bank intends to
 24 exercise. If available, copies of relevant federal law, regulations, and
 25 interpretive letters must be attached to the letter submitted by the bank.

26 (c) The department shall promptly notify the requesting bank of the
 27 department's receipt of the letter submitted under subsection (b).
 28 Except as provided in subsection (e), the bank may exercise the
 29 requested rights and privileges sixty (60) days after the date on which
 30 the department receives the letter unless otherwise notified by the
 31 department.

32 (d) The department, through its members, may prohibit the bank
 33 from exercising the requested rights and privileges only if the members
 34 find that:

35 (1) national banks domiciled in Indiana do not possess the
 36 requested rights and privileges; or

37 (2) the exercise of the requested rights and privileges by the bank
 38 would adversely affect the safety and soundness of the bank.

39 (e) The sixty (60) day period referred to in subsection (c) may be
 40 extended by the department based on a determination that the bank's
 41 letter raised issues requiring additional information or additional time for
 42 analysis. If the sixty (60) day period is extended under this subsection,
 43 the bank may exercise the requested rights and privileges only if the
 44 bank receives prior written approval from the department. However:

45 (1) the members must:

46 (A) approve or deny the requested rights and privileges; or

47 (B) convene a hearing;

48 not later than sixty (60) days after the department receives the
 49 bank's letter; and

1 (2) if a hearing is convened, the members must approve or deny
 2 the requested rights and privileges not later than sixty (60) days
 3 after the hearing is concluded.

4 (f) The exercise of rights and privileges by a bank in compliance with
 5 and in the manner authorized by this section is not a violation of any
 6 provision of the Indiana Code or rules adopted under IC 4-22-2.

7 (g) Whenever, in compliance with this section, a bank exercises
 8 rights and privileges granted to national banks domiciled in Indiana, all
 9 banks may exercise the same rights and privileges if the department by
 10 order determines that the exercise of the rights and privileges by all
 11 banks would not adversely affect their safety and soundness.

12 (h) If the department denies the request of a bank under this section
 13 to exercise any rights and privileges that are granted to national banks,
 14 the bank may appeal the decision of the department to the circuit court
 15 with jurisdiction in the county in which the principal office of the bank
 16 is located. In an appeal under this section, the court shall determine the
 17 matter de novo.

18 SECTION 35. IC 28-1-20-4, AS AMENDED BY P.L.258-2003,
 19 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 UPON PASSAGE]: Sec. 4. (a) Except as provided in subsections (c),
 21 (d), (g), and (k), it is unlawful for any person, firm, limited liability
 22 company, or corporation (other than a bank or trust company, a bank
 23 holding company, **a subsidiary of a bank or trust company, a**
 24 **subsidiary of a bank holding company, a subsidiary of a savings**
 25 **bank, a subsidiary of a savings association, or a corporate fiduciary**
 26 **organized or reorganized under IC 28 or statutes in effect at the time of**
 27 **organization or reorganization or under the laws of the United States):**

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

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

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

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

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

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

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

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

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

50 A building and loan association that includes "savings bank" in its title

1 under this section does not by that action become a savings bank for
2 purposes of IC 28-6.1.

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

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

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

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

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

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

40 (k) The word "bank", "banc", or "banco" may not be included in the
41 name of a corporate fiduciary.

42 (l) A person, firm, limited liability company, or corporation may not
43 use the name of an existing bank or bank holding company or a name
44 confusingly similar to that of an existing bank or bank holding company
45 when marketing to or soliciting business from a customer or
46 prospective customer if the reference to the existing bank or bank
47 holding company is:

- 48 (1) without the consent of the existing bank or bank holding
49 company; and
- 50 (2) in a manner that could cause a reasonable person to believe that

1 the marketing material or solicitation:

2 (A) originated from;

3 (B) is endorsed by; or

4 (C) is in any other way the responsibility of;

5 the existing bank or bank holding company.

6 (m) An existing bank or bank holding company may, in addition to
7 any other remedies available under the law, report an alleged violation
8 of subsection (l) to the department. If the department finds that the
9 marketing material or solicitation in question is in violation of subsection
10 (l), the department may direct the person, firm, limited liability
11 company, or corporation to cease and desist from using that marketing
12 material or solicitation in Indiana. If that person, firm, limited liability
13 company, or corporation persists in using the marketing material or
14 solicitation, the department may impose a civil penalty of up to fifteen
15 thousand dollars (\$15,000) for each violation. Each instance in which
16 the marketing material or solicitation is sent to a customer or
17 prospective customer constitutes a separate violation of subsection (l).

18 (n) Nothing in subsection (l) or (m) prohibits the use of or reference
19 to the name of an existing bank or bank holding company in marketing
20 materials or solicitations, if the use or reference does not deceive or
21 confuse a reasonable person regarding whether the marketing material
22 or solicitation:

23 (1) originated from;

24 (2) is endorsed by; or

25 (3) is in any other way the responsibility of;

26 the existing bank or bank holding company.

27 (o) The department may adopt rules under IC 4-22-2 to implement
28 this section.

29 SECTION 36. IC 28-7-1-9, AS AMENDED BY P.L.258-2003,
30 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2004]: Sec. 9. A credit union has the following powers:

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

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

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

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

43 (B) upon the making of the loan, the aggregate amount of loans
44 outstanding under this subdivision will not exceed twenty percent
45 (20%) of the unimpaired capital and surplus of the credit union;

46 (C) the loan is approved by the credit committee or loan officer;
47 and

48 (D) the borrower takes no part in the consideration of or vote on
49 the application.

50 (4) To invest in any of the following:

- 1 (A) Bonds, notes, or certificates that are the direct or indirect
2 obligations of the United States, or of the state, or the direct
3 obligations of a county, township, city, town, or other taxing
4 district or municipality or instrumentality of Indiana and that are
5 not in default.
- 6 (B) Bonds or debentures issued by the Federal Home Loan Bank
7 Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan
8 Act (12 U.S.C. 1461 through 1468).
- 9 (C) Interest-bearing obligations of the FSLIC Resolution Fund
10 and obligations of national mortgage associations issued under the
11 authority of the National Housing Act.
- 12 (D) Mortgages on real estate situated in Indiana which are fully
13 insured under Title 2 of the National Housing Act (12 U.S.C.
14 1707 through 1715z).
- 15 (E) Obligations issued by farm credit banks and banks for
16 cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001
17 through 2279aa-14).
- 18 (F) In savings and loan associations, other credit unions that are
19 insured under IC 28-7-1-31.5 and certificates of indebtedness or
20 investment of an industrial loan and investment company if the
21 association or company is federally insured. Not more than
22 twenty percent (20%) of the assets of a credit union may be
23 invested in the shares or certificates of an association or
24 company; nor more than forty percent (40%) in all such
25 associations and companies.
- 26 (G) Corporate credit unions.
- 27 (H) Federal funds or similar types of daily funds transactions
28 with other financial institutions.
- 29 (I) Mutual funds created and controlled by credit unions, credit
30 union associations, or their subsidiaries. Mutual funds referred to
31 in this clause may invest only in instruments that are approved
32 for credit union purchase under this chapter.
- 33 (J) Shares, stocks, or obligations of any credit union service
34 organization (as defined in Section 712 of the Rules and
35 Regulations of the National Credit Union Administration) with the
36 approval of the department. Not more than five percent (5%) of
37 the total paid in and unimpaired capital of the credit union may be
38 invested under this clause.
- 39 (5) To deposit its funds into:
- 40 (A) depository institutions that are federally insured; or
41 (B) state chartered credit unions that are privately insured by an
42 insurer approved by the department.
- 43 (6) To purchase, hold, own, or convey real estate as may be
44 conveyed to the credit union in satisfaction of debts previously
45 contracted or in exchange for real estate conveyed to the credit
46 union.
- 47 (7) To own, hold, or convey real estate as may be purchased by
48 the credit union upon judgment in its favor or decrees of
49 foreclosure upon mortgages.
- 50 (8) To issue shares of stock and upon the terms, conditions,

- 1 limitations, and restrictions and with the relative rights as may be
2 stated in the bylaws of the credit union, but no stock may have
3 preference or priority over the other to share in the assets of the
4 credit union upon liquidation or dissolution or for the payment of
5 dividends except as to the amount of the dividends and the time for
6 the payment of the dividends as provided in the bylaws.
- 7 (9) To charge the member's share account for the actual cost of
8 necessary locator service when the member has failed to keep the
9 credit union informed about the member's current address. The
10 charge shall be made only for amounts paid to a person or concern
11 normally engaged in providing such service, and shall be made
12 against the account or accounts of any one (1) member not more
13 than once in any twelve (12) month period.
- 14 (10) To transfer to an accounts payable, a dormant account, or a
15 special account share accounts which have been inactive, except
16 for dividend credits, for a period of two (2) years. The credit union
17 shall not consider the payment of dividends on the transferred
18 account.
- 19 (11) To invest in fixed assets with the funds of the credit union. An
20 investment in fixed assets in excess of five percent (5%) of its
21 assets is subject to the approval of the department.
- 22 (12) To establish branch offices, upon approval of the department,
23 provided that all books of account shall be maintained at the
24 principal office.
- 25 (13) To pay an interest refund on loans proportionate to the interest
26 paid during the dividend period by borrowers who are members at
27 the end of the dividend period.
- 28 (14) To purchase life savings and loan protection insurance for the
29 benefit of the credit union and its members, if:
- 30 (A) the coverage is placed with an insurance company licensed
31 to do business in Indiana; and
- 32 (B) no officer, director, or employee of the credit union
33 personally benefits, directly or indirectly, from the sale or
34 purchase of the coverage.
- 35 (15) To sell and cash negotiable checks, travelers checks, and
36 money orders for members.
- 37 (16) To purchase members' notes from any liquidating credit union,
38 with written approval from the department, at prices agreed upon
39 by the boards of directors of both the liquidating and the
40 purchasing credit unions. However, the aggregate of the unpaid
41 balances of all notes of liquidating credit unions purchased by any
42 one (1) credit union shall not exceed ten percent (10%) of its
43 unimpaired capital and surplus unless special written authorization
44 has been granted by the department.
- 45 (17) To exercise such incidental powers necessary or requisite to
46 enable it to carry on effectively the business for which it is
47 incorporated.
- 48 (18) To act as a custodian or trustee of any trust created or
49 organized in the United States and forming part of a stock bonus,
50 pension, or profit sharing plan which qualifies or qualified for

- 1 specific tax treatment under Section 408(a) or Section 401(d) of
 2 the Internal Revenue Code, if the funds of the trust are invested
 3 only in share accounts or insured certificates of the credit union.
- 4 (19) To issue shares of its capital stock or insured certificates to a
 5 trustee or custodian of a pension plan, profit sharing plan, or stock
 6 bonus plan which qualifies for specific tax treatment under
 7 Sections 401(d) or 408(a) of the Internal Revenue Code.
- 8 (20) A credit union may exercise any rights and privileges that are:
 9 (A) granted to federal credit unions; but
 10 (B) not authorized for credit unions under the Indiana Code
 11 (except for this section) or any rule adopted under the Indiana
 12 Code;
- 13 if the credit union complies with section 9.2 of this chapter.
- 14 (21) To sell, pledge, or discount any of its assets. However, a
 15 credit union may not pledge any of its assets as security for the
 16 safekeeping and prompt payment of any money deposited, except
 17 that a credit union may, for the safekeeping and prompt payment
 18 of money deposited, give security as authorized by federal law.
- 19 (22) To purchase assets of another credit union and to assume the
 20 liabilities of the selling credit union.
- 21 (23) To act as a fiscal agent of the United States and to receive
 22 deposits from nonmember units of the federal, state, or county
 23 governments, from political subdivisions, and from other credit
 24 unions upon which the credit union may pay varying interest rates
 25 at varying maturities subject to terms, rates, and conditions that are
 26 established by the board of directors. However, the total amount of
 27 public funds received from units of state and county governments
 28 and political subdivisions that a credit union may have on deposit
 29 may not exceed ~~ten~~ **twenty** percent ~~(10%)~~ **(20%)** of the total
 30 assets of that credit union, excluding those public funds.
- 31 (24) To join the National Credit Union Administration Central
 32 Liquidity Facility.
- 33 (25) To participate in community investment initiatives under the
 34 administration of organizations:
 35 (A) exempt from taxation under Section 501(c)(3) of the Internal
 36 Revenue Code; and
 37 (B) located or conducting activities in communities in which the
 38 credit union does business.
- 39 Participation may be in the form of either charitable contributions
 40 or participation loans. In either case, disbursement of funds
 41 through the administering organization is not required to be limited
 42 to members of the credit union. Total contributions or participation
 43 loans may not exceed one tenth of one percent (0.001) of total
 44 assets of the credit union. A recipient of a contribution or loan is
 45 not considered qualified for credit union membership. A
 46 contribution or participation loan made under this subdivision must
 47 be approved by the board of directors.
- 48 (26) To establish and operate an automated teller machine (ATM):
 49 (A) at any location within Indiana; or
 50 (B) as permitted by the laws of the state in which the automated

1 teller machine is to be located.

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

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

7 (B) all advances necessarily paid out and expended in the
8 discharge and performance of its duties; and

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

11 (28) Subject to any restrictions the department may impose, to
12 become the owner or lessor of personal property acquired upon the
13 request and for the use of a member and to incur additional
14 obligations as may be incident to becoming an owner or lessor of
15 such property.

16 SECTION 37. IC 28-7-1-9.2, AS ADDED BY P.L.134-2001,
17 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2004]: Sec. 9.2. (a) As used in this section, "rights and
19 privileges" means the power:

20 (1) to:

21 ~~(1)~~ (A) create;

22 ~~(2)~~ (B) deliver;

23 ~~(3)~~ (C) acquire; or

24 ~~(4)~~ (D) sell;

25 a product, a service, or an investment that is available to or offered
26 by; **or**

27 **(2) to engage in other activities authorized for;**

28 federal credit unions domiciled in Indiana.

29 (b) A credit union that intends to exercise any rights and privileges
30 that are:

31 (1) granted to federal credit unions; but

32 (2) not authorized for credit unions under the Indiana Code (except
33 for this section) or any rule adopted under the Indiana Code;

34 shall submit a letter to the department describing in detail the requested
35 rights and privileges granted to federal credit unions that the credit
36 union intends to exercise. If available, copies of relevant federal law,
37 regulations, and interpretive letters must be attached to the letter
38 submitted by the credit union.

39 (c) The department shall promptly notify the requesting credit union
40 of the department's receipt of the letter submitted under subsection (b).
41 Except as provided in subsection (e), the credit union may exercise the
42 requested rights and privileges sixty (60) days after the date on which
43 the department receives the letter unless otherwise notified by the
44 department.

45 (d) The department, through its members, may prohibit the credit
46 union from exercising the requested rights and privileges only if the
47 members find that:

48 (1) federal credit unions domiciled in Indiana do not possess the
49 requested rights and privileges; or

1 (2) the exercise of the requested rights and privileges by the credit
 2 union would adversely affect the safety and soundness of the credit
 3 union.

4 (e) The sixty (60) day period referred to in subsection (c) may be
 5 extended by the department based on a determination that the credit
 6 union's letter raised issues requiring additional information or additional
 7 time for analysis. If the sixty (60) day period is extended under this
 8 subsection, the credit union may exercise the requested rights and
 9 privileges only if the credit union receives prior written approval from
 10 the department. However:

11 (1) the members must:
 12 (A) approve or deny the requested rights and privileges; or
 13 (B) convene a hearing;
 14 not later than sixty (60) days after the department receives the
 15 credit union's letter; and
 16 (2) if a hearing is convened, the members must approve or deny
 17 the requested rights and privileges not later than sixty (60) days
 18 after the hearing is concluded.

19 (f) The exercise of rights and privileges by a credit union in
 20 compliance with and in the manner authorized by this section is not a
 21 violation of any provision of the Indiana Code or rules adopted under
 22 IC 4-22-2.

23 (g) Whenever, in compliance with this section, a credit union
 24 exercises rights and privileges granted to federal credit unions domiciled
 25 in Indiana, all credit unions may exercise the same rights and privileges
 26 if the department by order determines that the exercise of the rights and
 27 privileges by all credit unions would not adversely affect their safety
 28 and soundness.

29 (h) If the department denies the request of a credit union under this
 30 section to exercise any rights and privileges that are granted to federal
 31 credit unions, the credit union may appeal the decision of the
 32 department to the circuit court with jurisdiction in the county in which
 33 the principal office of the credit union is located. In an appeal under this
 34 section, the court shall determine the matter de novo.

35 SECTION 38. IC 28-8-4-27 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. (a) Except as
 37 provided in section 29 of this chapter, an application must be
 38 accompanied by a security device that secures the faithful performance
 39 of the obligations of the licensee to receive, handle, transmit, and pay
 40 money in connection with the:

41 (1) sale and issuance of payment instruments; or
 42 (2) transmission of money.
 43 (b) The security device required under subsection (a) must:
 44 (1) be in an amount as provided under subsection (c);
 45 (2) run to the state; and
 46 (3) be in a form acceptable to the director.
 47 (c) The security device must be in an amount calculated as follows:
 48 STEP ONE: Subtract one (1) from the number of locations where
 49 the applicant proposes to engage in business under the license.
 50 STEP TWO: Multiply the difference determined under STEP ONE

- 1 by ten thousand dollars (\$10,000).
- 2 STEP THREE: Add ~~one~~ **two** hundred thousand dollars ~~(\$100,000)~~
- 3 **(\$200,000)** to the product determined under STEP TWO.
- 4 STEP FOUR: Pay the amount that is the lesser of:
- 5 (1) the sum determined in STEP THREE; or
- 6 (2) ~~two~~ **three** hundred thousand dollars ~~(\$200,000)~~. **(\$300,000)**.
- 7 (d) If the security device filed is a bond, the aggregate liability of the
- 8 surety shall not exceed the principal sum of the bond.
- 9 SECTION 39. IC 28-8-4-33 IS AMENDED TO READ AS
- 10 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) A license granted
- 11 under this chapter permits a licensee to conduct business:
- 12 (1) at one (1) or more locations directly or indirectly owned by the
- 13 licensee; or
- 14 (2) through one (1) or more authorized delegates.
- 15 (b) Each licensee shall maintain a policy of insurance issued by an
- 16 insurer authorized to do business in Indiana that insures the applicant
- 17 against loss by a criminal act or act of dishonesty. The principal sum of
- 18 the policy shall be equivalent to ~~one-half (1/2)~~ **the amount** of the
- 19 required security device required under section 27 of this chapter or
- 20 deposit required under section 29 of this chapter.
- 21 (c) Except as provided in subsection (d), a licensee must at all times
- 22 possess permissible investments with an aggregate market value
- 23 calculated in accordance with generally accepted accounting principles
- 24 of not less than the aggregate face amount of all outstanding payment
- 25 instruments issued or sold by the licensee or an authorized delegate of
- 26 the licensee in the United States.
- 27 (d) The director may waive the permissible investments requirement
- 28 in subsection (c) if the dollar volume of a licensee's outstanding
- 29 payment instruments does not exceed:
- 30 (1) the security device posted by the licensee under section 27 of
- 31 this chapter; or
- 32 (2) the deposit made by the licensee under section 29 of this
- 33 chapter.
- 34 (e) A licensee that is a corporation must at all times be in good
- 35 standing with the secretary of state of the state in which the licensee
- 36 was incorporated.
- 37 SECTION 40. IC 28-10-1-1, AS AMENDED BY P.L.258-2003,
- 38 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 39 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1. A reference to a federal
- 40 law or federal regulation in IC 28 is a reference to the law or regulation
- 41 in effect January 1, ~~2003~~. **2004**.
- 42 SECTION 41. IC 28-11-3-6 IS ADDED TO THE INDIANA CODE
- 43 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
- 44 1, 2004]: **Sec. 6. (a) As used in this section:**
- 45 **(1) "federally chartered" means an entity organized or**
- 46 **reorganized under the law of the United States; and**
- 47 **(2) "state chartered" means an entity organized or**
- 48 **reorganized under the law of Indiana or another state.**
- 49 **(b) If the department determines that federal law has**

1 preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the
 2 provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state
 3 chartered entity only to the same extent that the department
 4 determines the provision is applicable to the:

5 (1) same; or

6 (2) functionally equivalent;

7 type of federally chartered entity.

8 (c) A state chartered entity seeking an exemption from a
 9 provision of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the
 10 preemption of the provision as applied to a federally chartered
 11 entity shall submit a letter to the department:

12 (1) describing in detail; and

13 (2) documenting the federal preemption of;

14 the provisions from which it seeks exemption. If available, copies
 15 of relevant federal law, regulations, and interpretive letters must
 16 be attached to the letter submitted by the requesting entity.

17 (d) The department shall notify the requesting entity within ten
 18 (10) business days after the department's receipt of a letter
 19 described in subsection (c). Except as provided in subsection (e),
 20 upon receipt of the notification, the requesting entity may operate
 21 as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29,
 22 or IC 30 for ninety (90) days after the date on which the
 23 department receives the letter, unless otherwise notified by the
 24 department. This period may be extended if the department
 25 determines that the requesting entity's letter raises issues
 26 requiring additional information or additional time for analysis. If
 27 the department extends the period, the requesting entity may
 28 operate as if the requesting entity is exempt from a provision of
 29 IC 24, IC 26, IC 28, IC 29, or IC 30 only if the requesting entity
 30 receives prior written approval from the department. However:

31 (1) the department must:

32 (A) approve or deny the requested exemption; or

33 (B) convene a hearing;

34 not later than ninety (90) days after the department receives
 35 the requesting entity's letter; and

36 (2) if a hearing is convened, the department must approve or
 37 deny the requested exemption not later than ninety (90) days
 38 after the hearing is concluded.

39 (e) The department may refuse to exempt a requesting entity
 40 from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the
 41 department finds that any of the following conditions apply:

42 (1) The department determines that a described provision of
 43 IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a
 44 federally chartered entity of the:

45 (A) same; or

46 (B) functionally equivalent;

47 type.

1 **(2) The extension of the federal preemption in the form of an**
 2 **exemption from a provision of IC 24, IC 26, IC 28, IC 29, or**
 3 **IC 30 to the requesting entity would:**

4 **(A) adversely affect the safety and soundness of the**
 5 **requesting entity; or**

6 **(B) result in an unacceptable curtailment of consumer**
 7 **protection provisions.**

8 **(3) The failure of the department to provide for the exemption**
 9 **from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will**
 10 **not result in a competitive disadvantage to the requesting**
 11 **entity.**

12 **(f) The operation of a financial institution in a manner**
 13 **consistent with exemption from a provision of IC 24, IC 26, IC 28,**
 14 **IC 29, or IC 30 under this section is not a violation of any**
 15 **provision of the Indiana Code or rules adopted under IC 4-22-2.**

16 **(g) If a financial institution is exempted from the provisions of**
 17 **IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this**
 18 **section, the department shall do the following:**

19 **(1) Determine whether the exemption shall apply to all**
 20 **financial institutions that, in the opinion of the department,**
 21 **possess a charter that is:**

22 **(A) the same as; or**

23 **(B) functionally the equivalent of;**

24 **the charter of the exempt institution.**

25 **(2) For purposes of the determination required under**
 26 **subdivision (1), ensure that applying the exemption to the**
 27 **financial institutions described in subdivision (1) will not:**

28 **(A) adversely affect the safety and soundness of the**
 29 **financial institutions; or**

30 **(B) unduly constrain Indiana consumer protection**
 31 **provisions.**

32 **(3) Issue an order published in the Indiana Register that**
 33 **specifies whether the exemption applies to the financial**
 34 **institutions described in subdivision (1).**

35 **(h) If the department denies the request of a financial**
 36 **institution under this section for exemption from Indiana Code**
 37 **provisions that are preempted for federally chartered institutions,**
 38 **the requesting institution may appeal the decision of the**
 39 **department to the circuit court of the county in which the**
 40 **principal office of the requesting institution is located.**

41 SECTION 42. IC 28-13-16-4, AS AMENDED BY P.L.258-2003,
 42 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 43 JULY 1, 2004]: Sec. 4. (a) A financial institution or any of its
 44 subsidiaries may acquire or establish a qualifying subsidiary by
 45 providing the department with written notice before acquiring or
 46 establishing the subsidiary. The department shall notify the requesting
 47 financial institution of the department's receipt of the notice.

1 (b) A subsidiary may exercise a power or engage in an activity
 2 permitted to be performed by a financial institution under the same
 3 conditions and restrictions as if the power or activity is performed by
 4 the financial institution itself, or the activity has been authorized ~~by~~ **as**
 5 **"activity eligible for notice" procedures under 12 CFR**
 6 ~~5.34(e)(2)(ii).~~ **5.34(e).**

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

10 SECTION 43. IC 28-13-16-5, AS ADDED BY P.L.215-1999,
 11 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2004]: Sec. 5. A financial institution may acquire or establish
 13 a nonqualifying subsidiary by submitting an application to the
 14 department containing:

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

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

27 SECTION 44. IC 28-15-2-2 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) As used in this
 29 section, "rights and privileges" means the power:

- 30 (1) to:
 31 ~~(1)~~ (A) create;
 32 ~~(2)~~ (B) deliver;
 33 ~~(3)~~ (C) acquire; or
 34 ~~(4)~~ (D) sell;

35 a ~~product or service~~ **product, a service, or an investment** that is
 36 available to or offered by; or

- 37 (2) **to engage in other activities authorized for;**

38 federal savings associations **domiciled in Indiana.**

39 (b) Subject to this section, savings associations may exercise the
 40 rights and privileges that are granted to federal savings associations.

41 (c) A savings association that intends to exercise any rights and
 42 privileges that are:

- 43 (1) granted to federal savings associations; but
 44 (2) not authorized for savings associations under:
 45 (A) the Indiana Code (except for this section); or
 46 (B) a rule adopted under IC 4-22-2;

47 shall submit a letter to the department, describing in detail the requested
 48 rights and privileges granted to federal savings associations that the
 49 savings association intends to exercise. If available, copies of relevant

1 federal law, regulations, and interpretive letters must be attached to the
2 letter.

3 (d) The department shall promptly notify the requesting savings
4 association of its receipt of the letter submitted under subsection (c).
5 Except as provided in subsection (f), the savings association may
6 exercise the requested rights and privileges sixty (60) days after the date
7 on which the department receives the letter unless otherwise notified by
8 the department.

9 (e) The department, through its members, may prohibit the savings
10 association from exercising the requested rights and privileges only if
11 the members find that:

12 (1) federal savings associations in Indiana do not possess the
13 requested rights and privileges; or

14 (2) the exercise of the requested rights and privileges by the
15 savings association would adversely affect the safety and
16 soundness of the savings association.

17 (f) The sixty (60) day period referred to in subsection (d) may be
18 extended by the department based on a determination that the savings
19 association letter raises issues requiring additional information or
20 additional time for analysis. If the sixty (60) day period is extended
21 under this subsection, the savings association may exercise the
22 requested rights and privileges only if the savings association receives
23 prior written approval from the department. However:

24 (1) the members must:

25 (A) approve or deny the requested rights and privileges; or

26 (B) convene a hearing;

27 not later than sixty (60) days after the department receives the
28 savings association's letter; and

29 (2) if a hearing is convened, the members must approve or deny
30 the requested rights and privileges not later than sixty (60) days
31 after the hearing is concluded.

32 (g) The exercise of rights and privileges by a savings association in
33 compliance with and in the manner authorized by this section does not
34 constitute a violation of any provision of the Indiana Code or rules
35 adopted under IC 4-22-2.

36 (h) Whenever, in compliance with this section, a savings association
37 exercises rights and privileges granted to national savings associations
38 domiciled in Indiana, all savings associations may exercise the same
39 rights and privileges if the department by order determines that the
40 exercise of the rights and privileges by all savings associations would
41 not adversely affect their safety and soundness.

42 SECTION 45. IC 32-29-1-2.5 IS ADDED TO THE INDIANA CODE
43 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
44 1, 2004]: **Sec. 2.5. A mortgagee or a mortgagee's assignee or
45 representative may not require a mortgagor, as a condition of
46 receiving or maintaining a mortgage, to obtain hazard insurance
47 coverage against risks to improvements on the mortgaged
48 property in an amount exceeding the replacement value of the
49 improvements.**

1 SECTION 46. IC 34-7-4-2, AS AMENDED BY SEA 263-2004,
 2 SECTION 120, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JANUARY 1, 2005]: Sec. 2. Statutes outside IC 34 providing causes of
 4 action or procedures include the following:

- 5 (1) IC 4-21.5-5 (Judicial review of administrative agency actions).
 6 (2) IC 22-3-4 (Worker's compensation administration and
 7 procedures).
 8 (3) IC 22-4-17 (Unemployment compensation system, employee's
 9 claims for benefits).
 10 (4) IC 22-4-32 (Unemployment compensation system, employer's
 11 appeal process).
 12 (5) IC 22-9 (Civil rights actions).
 13 (6) **IC 24-9 (Home loans).**
 14 (7) IC 31-14 (Paternity).
 15 ~~(8)~~ (8) IC 31-15 (Dissolution of marriage and legal separation).
 16 ~~(9)~~ (9) IC 31-16 (Support of children and other dependants).
 17 ~~(10)~~ (10) IC 31-17 (Custody and visitation).
 18 ~~(11)~~ (11) IC 31-19 (Adoption).
 19 ~~(12)~~ (12) IC 32-27-2, IC 32-30-1, IC 32-30-2, ~~IC 32-30-2.1,~~
 20 ~~IC 32-30-2,~~ IC 32-30-4, IC 32-30-9, IC 32-30-10, IC 32-30-12,
 21 IC 32-30-13, and IC 32-30-14 (Real property).
 22 ~~(13)~~ (13) IC 33-43-4 (Attorney liens).

23 SECTION 47. IC 36-2-7-10, AS AMENDED BY P.L.2-2003,
 24 SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JANUARY 1, 2005]: Sec. 10. (a) The county recorder shall tax and
 26 collect the fees prescribed by this section for recording, filing, copying,
 27 and other services the recorder renders, and shall pay them into the
 28 county treasury at the end of each calendar month. The fees prescribed
 29 and collected under this section supersede all other recording fees
 30 required by law to be charged for services rendered by the county
 31 recorder.

32 (b) The county recorder shall charge the following:

- 33 (1) Six dollars (\$6) for the first page and two dollars (\$2) for each
 34 additional page of any document the recorder records if the pages
 35 are not larger than eight and one-half (8 1/2) inches by fourteen
 36 (14) inches.
 37 (2) Fifteen dollars (\$15) for the first page and five dollars (\$5) for
 38 each additional page of any document the recorder records, if the
 39 pages are larger than eight and one-half (8 1/2) inches by fourteen
 40 (14) inches.
 41 (3) For attesting to the release, partial release, or assignment of any
 42 mortgage, judgment, lien, or oil and gas lease contained on a
 43 multiple transaction document, the fee for each transaction after the
 44 first is the amount provided in subdivision (1) plus the amount
 45 provided in subdivision (4) and one dollar (\$1) for marginal
 46 mortgage assignments or marginal mortgage releases.
 47 (4) One dollar (\$1) for each cross-reference of a recorded
 48 document.
 49 (5) One dollar (\$1) per page not larger than eight and one-half (8

- 1 1/2) inches by fourteen (14) inches for furnishing copies of
 2 records produced by a photographic process, and two dollars (\$2)
 3 per page that is larger than eight and one-half (8 1/2) inches by
 4 fourteen (14) inches.
- 5 (6) Five dollars (\$5) for acknowledging or certifying to a
 6 document.
- 7 (7) Five dollars (\$5) for each deed the recorder records, in addition
 8 to other fees for deeds, for the county surveyor's corner
 9 perpetuation fund for use as provided in IC 32-19-4-3 or
 10 IC 36-2-12-11(e).
- 11 (8) A fee in an amount authorized under IC 5-14-3-8 for
 12 transmitting a copy of a document by facsimile machine.
- 13 (9) A fee in an amount authorized by an ordinance adopted by the
 14 county legislative body for duplicating a computer tape, a computer
 15 disk, an optical disk, microfilm, or similar media. This fee may not
 16 cover making a handwritten copy or a photocopy or using
 17 xerography or a duplicating machine.
- 18 (10) A supplemental fee of three dollars (\$3) for recording a
 19 document that is paid at the time of recording. The fee under this
 20 subdivision is in addition to other fees provided by law for
 21 recording a document.
- 22 **(11) Three dollars (\$3) for each mortgage on real estate**
 23 **recorded, in addition to other fees required by this section,**
 24 **distributed as follows:**
- 25 **(A) Fifty cents (\$0.50) is to be deposited in the recorder's**
 26 **record perpetuation fund.**
- 27 **(B) Two dollars and fifty cents (\$2.50) is to be distributed to**
 28 **the auditor of state on or before June 20 and December 20**
 29 **of each year as provided in IC 24-9-9-3.**
- 30 (c) The county treasurer shall establish a recorder's records
 31 perpetuation fund. All revenue received under subsection (b)(5), (b)(8),
 32 (b)(9), and (b)(10), **and fifty cents (\$0.50) from revenue received**
 33 **under subsection (b)(11),** shall be deposited in this fund. The county
 34 recorder may use any money in this fund without appropriation for the
 35 preservation of records and the improvement of record keeping systems
 36 and equipment.
- 37 (d) As used in this section, "record" or "recording" includes the
 38 functions of recording, filing, and filing for record.
- 39 (e) The county recorder shall post the fees set forth in subsection (b)
 40 in a prominent place within the county recorder's office where the fee
 41 schedule will be readily accessible to the public.
- 42 (f) The county recorder may not tax or collect any fee for:
- 43 (1) recording an official bond of a public officer, a deputy, an
 44 appointee, or an employee; or
- 45 (2) performing any service under any of the following:
- 46 (A) IC 6-1.1-22-2(c).
 47 (B) IC 8-23-7.
 48 (C) IC 8-23-23.
 49 (D) IC 10-17-2-3.

1 (E) IC 10-17-3-2.

2 (F) IC 12-14-13.

3 (G) IC 12-14-16.

4 (g) The state and its agencies and instrumentalities are required to pay
5 the recording fees and charges that this section prescribes.

6 SECTION 48. THE FOLLOWING ARE REPEALED [EFFECTIVE
7 JULY 1, 2004]: IC 24-4.5-7-407; IC 24-4.5-7-408.

8 SECTION 49. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding**
9 **IC 4-4-3-8(b)(15), as added by this act, the department of**
10 **commerce shall carry out the duties imposed on it under**
11 **IC 4-4-3-8(b)(15), as added by this act, under interim written**
12 **guidelines approved by the executive director of the department**
13 **of commerce.**

14 **(b) This SECTION expires on the earlier of the following:**

15 **(1) The date rules are adopted under IC 4-4-3-8(b)(15), as**
16 **added by this act.**

17 **(2) July 1, 2005.**

18 SECTION 50. [EFFECTIVE UPON PASSAGE] **Notwithstanding**
19 **IC 24-9-3 and IC 24-9-4, both as added by this act, a person is not**
20 **subject to a prohibition or requirement of IC 24-9-3 and IC 24-9-4,**
21 **both as added by this act, with respect to a loan made before**
22 **January 1, 2005.**

23 SECTION 51. **An emergency is declared for this act.**

(Reference is to EHB 1229 as reprinted February 26, 2004.)

Conference Committee Report
on
Engrossed House Bill 1229

Signed by:

Representative Bardon
Chairperson

Senator Bray

Representative Burton

Senator Lanane

House Conferees

Senate Conferees