Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1299

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AN ACT to amend the Indiana Code concerning financial institutions.

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

SECTION 1. IC 24-4.5-1-102, AS AMENDED BY P.L.141-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 102. Purposes; Rules of Construction (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

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

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

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

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

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

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

(f) to conform the regulation of consumer credit transactions to

the policies of the Federal Consumer Credit Protection Act; and

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

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

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2004.~~ **2005.**

SECTION 2. IC 24-4.5-1-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 201. (1) Except as otherwise provided in this section, this article applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations and deferrals, made in this state, of sales, leases, and loans, wherever made. For purposes of this article:

(a) a sale or modification of a sale agreement is made in this state if the buyer's agreement or offer to purchase or to modify is received by the seller or a person acting on behalf of the seller in this state;

(b) a lease or modification of a lease agreement is made in this state if the lessee's agreement or offer to lease or to modify is received by the lessor or a person acting on behalf of the lessor in this state; and

(c) a loan or modification of a loan agreement is made in this state if a writing signed by the debtor and evidencing the debt is received by the lender or a person acting on behalf of the lender in this state.

(2) With respect to sales made pursuant to a revolving charge account (IC 24-4.5-2-108), this article applies if the buyer's communication or indications of ~~his~~ **the buyer's** intention to establish the account is received by the seller in this state. If no communication or indication of intention is given by the buyer before the first sale, this article applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this state.

(3) With respect to loans made pursuant to a lender credit card or similar arrangement, this article applies if the debtor's communication or indication of ~~his~~ **the debtor's** intention to establish the arrangement with the lender is received by the lender in this state. If no communication or indication of intention is given by the debtor before the first loan, this article applies if the lender's communication notifying the debtor of the privilege of using the arrangement is mailed or personally delivered in this state.

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(4) IC 24-4.5-5-101 through IC 24-4.5-5-108 apply to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

(5) If a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this state when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) a seller, **a** lessor, **a** lender, or **an** assignee of ~~his~~ **the seller's, lessor's, or assignee's** rights, may not collect charges through actions or other proceedings in excess of those permitted by IC 24-4.5-2, ~~or by~~ IC 24-4.5-3, **or IC 24-4.5-7;** and

(b) a seller, **a** lessor, **a** lender, or **an** assignee of ~~his~~ **the seller's, lessor's, or assignee's** rights, may not enforce rights against the buyer, lessee, or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices of IC 24-4.5-2, ~~or of~~ IC 24-4.5-3, **or IC 24-4.5-7.**

(6) Except as provided in subsection (4), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(7) For the purposes of this article, the residence of a buyer, lessee, or debtor is the address given by ~~him~~ **the buyer, lessee, or debtor** as ~~his~~ **the buyer's, lessee's, or debtor's** residence in any writing signed by ~~him~~ **the buyer, lessee, or debtor** in connection with a credit transaction. Until ~~he~~ **the buyer, lessee, or debtor** notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(7.5) With respect to a consumer credit sale, consumer lease, or consumer loan, or modification thereof, to which this article does not otherwise apply by reason of subsections (1) through (3), if pursuant to a solicitation relating to a consumer credit sale, consumer lease, or consumer loan, a person who is a resident of this state sends a signed writing evidencing the obligation or offer of the person to a creditor in another state and receives the goods or service purchased, the goods leased, or the cash proceeds of the loan in this state:

(a) a seller, **a** lessor, **a** lender or **an** assignee of ~~his~~ **the seller's, lessor's, or lender's** rights may not contract for or receive

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charges in excess of those permitted by IC 24-4.5-2, ~~or by~~ IC 24-4.5-3, **or IC 24-4.5-7;**

(b) the provisions of IC 24-4.5-2-301, ~~and~~ IC 24-4.5-3-301, **and IC 24-4.5-7-301** shall apply as though the sale, lease, or loan ~~was~~ **were** made in this state; and

(c) the provisions of IC 24-4.5-6-101 through IC 24-4.5-6-117 shall apply as though the sale, lease, or loan ~~was~~ **were** made in this state.

(7.6) For the purpose of this section, a solicitation relating to a consumer credit sale, consumer lease, or consumer loan includes:

(a) with respect to sales and leases, an offer by a catalog, pamphlet, flier, letter, or similar written material to sell or lease goods or to sell services if the terms for the extension of credit are contained therein and regardless of whether or not the instrument of solicitation is sent or delivered at the request of the buyer or lessee;

(b) with respect to loans, an offer by pamphlet, flier, letter, or similar written material to make loans if the terms for the extension of credit are contained therein and regardless of whether or not the instrument of solicitation is sent or delivered at the request of the debtor; and

(c) with respect to sales, leases, and loans, an offer by telephone to extend credit if initiated by the seller, lessor, or lender.

(8) Notwithstanding other provisions of this section:

(a) except as provided in subsection (4), this article does not apply if the buyer, lessee, or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of ~~his~~ **the buyer's, lessee's, or debtor's** residence applies; and

(b) this article applies if the buyer, lessee, or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(9) Except as provided in subsection (8), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this article applies:

(a) that the law of another state shall apply;

(b) that the buyer, lessee, or debtor consents to the jurisdiction of another state; and

(c) that fixes venue.

(10) The following provisions of this article specify the applicable law governing certain cases:

(a) applicability (IC 24-4.5-6-102) of the provisions on powers

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and functions of the department; and

(b) applicability (IC 24-4.5-6-201) of the provisions on notification and fees.

SECTION 3. IC 24-4.5-1-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 301. General Definitions–In addition to definitions appearing in subsequent chapters in this article:

(1) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(2) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products; "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(3) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(4) "Closing costs" with respect to a debt secured by an interest in land includes:

(a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;

(b) fees for preparation of a deed, settlement statement, or other documents;

(c) escrows for future payments of taxes and insurance;

(d) fees for notarizing deeds and other documents;

(e) appraisal fees; and

(f) credit reports.

(5) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(6) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" means a person:

(a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as

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applicable, or is payable in installments; and

(b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(9) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(10) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

(a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;

(b) by the lender's payment or agreement to pay the debtor's obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(11) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(12) "Organization" means a corporation, **a** government or governmental subdivision, or **an** agency, **a** trust, **an** estate, **a** partnership, **a** limited liability company, **a** cooperative, or **an** association.

(13) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(14) "Person" includes a natural person or an individual, and an organization.

(15) "Person related to" with respect to an individual means:

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the

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individual's spouse; and

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with ~~him.~~ **the person.**

(16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(17) "Mortgage transaction" means a transaction in which a first mortgage or a land contract which constitutes a first lien is created or retained against land.

(18) "Regularly engaged" means a person who extends consumer credit more than:

(a) twenty-five (25) times; or

(b) five (5) times for transactions secured by a dwelling;

in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(19) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of

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the United States.

(21) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(22) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

SECTION 4. IC 24-4.5-2-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts-(1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is three hundred dollars ($300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than three hundred dollars ($300) but does not exceed one thousand dollars ($1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than one thousand dollars ($1,000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed:

(a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-2-210).

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(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed more than thirty (30) days after that date, with the date of commencement of delivery or performance except as set forth below:

(a) Delays attributable to the customer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale agreement shall commence with the date credit is granted.

Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, ~~he~~ **the seller** may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars ($30). **The minimum credit service charge allowed under this subsection may be imposed only if:**

(a) the borrower prepays in full a consumer credit sale, refinancing, or consolidation, regardless of whether the sale, refinancing, or consolidation is precomputed;

(b) the sale, refinancing, or consolidation prepaid by the borrower is subject to a credit service charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2);

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and

(c) the credit service charge earned at the time of prepayment is less than the minimum credit service charge contracted for under this subsection.

(7) The amounts of three hundred dollars ($300) and one thousand dollars ($1,000) in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

(8) The amount of thirty dollars ($30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

SECTION 5. IC 24-4.5-3-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 201. Loan Finance Charge for Consumer Loans other than Supervised Loans—(1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-one percent (21%) per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account:

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge

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contracted for and received does not exceed a charge in each monthly billing cycle which is one and three-fourths percent (1 3/4%) of an amount no greater than:

(i) the average daily balance of the debt;

(ii) the unpaid balance of the debt on the same day of the billing cycle; or

(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth (1/12) the maximum annual percentage rate as the number of days in the billing cycle bears to thirty (30); and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents ($0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents ($0.50) which bears the same relation to fifty cents ($0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of IC 24-4.5-3-202).

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars ($30).

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The minimum loan finance charge allowed under this subsection may be imposed only if:

(a) the borrower prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;

(b) the loan, refinancing, or consolidation prepaid by the borrower is subject to a loan finance charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (1); and

(c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

(7) The amount of thirty dollars ($30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) In addition to the loan finance charge provided for in this section, a lender may contract for the following:

(a) With respect to a consumer loan that is not made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the loan amount.

(b) With respect to a consumer loan that is made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the line of credit that was contracted for.

(9) The charges provided for in subsection (8):

(a) are not subject to refund or rebate;

(b) are not permitted if a lender makes a settlement charge under IC 24-4.5-3-202(d)(ii); and

(c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars ($2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line and the increased credit line. This subsection does not prohibit a lender from contracting for and receiving a fee for preparing deeds,

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mortgages, reconveyance, and similar documents under IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in subsection (8).

SECTION 6. IC 24-4.5-3-502 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 502. Authority to Make Consumer Loans - Unless a person is a supervised financial organization **or a collection agency licensed under IC 25-11-1** or has first obtained a license from the department, the person shall not regularly engage in this state in ~~the business of:~~ **any of the following:**

~~(a)~~ **(1)** Making consumer loans. ~~or~~

~~(b)~~ **(2)** Taking assignments of ~~and undertaking~~ **consumer loans.**

(3) Undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans. However, ~~an assignee~~ **a person** may collect and enforce for three (3) months without a license if the ~~assignee~~ **person** promptly applies for a license and the ~~assignee's~~ **person's** application has not been denied.

SECTION 7. IC 24-4.5-3-503 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 503. License to Make Consumer Loans – (1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions.

(2) A license shall not be issued unless the department finds that the financial responsibility, character, and fitness of the applicant and of the members of the applicant (if the applicant is a copartnership or an association) and of the officers and directors of the applicant (if the applicant is a corporation) are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article. The director is entitled to request evidence of compliance with this section at:

(a) the time of application; ~~or after a license is issued. The evidence requested~~

(b) the time of renewal of a license; or

(c) any other time considered necessary by the director.

(3) Evidence of compliance with this section ~~includes:~~ **may include:** ~~but is not limited to, an official report of criminal activity of the applicant from the state law enforcement agency or criminal history records repository of the state in which the applicant resides.~~

(a) criminal background checks, including a national criminal history check by the Federal Bureau of Investigation;

(b) credit histories; and

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(c) other background checks considered necessary by the director.

(4) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

~~(3)~~ **(5)** Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

~~(4)~~ **(6)** The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) An initial investigation fee as established by the department under IC 28-11-3-5.

(c) An annual renewal fee as established by the department under IC 28-11-3-5.

(d) A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee is delinquent.

~~(5)~~ **(7)** The applicant may deduct the fees required under subsection ~~4(a)~~ **(6)(a)** through ~~4(c)~~ **(6)(c)** from the filing fees paid under IC 24-4.5-6-203.

~~(6)~~ **(8)** A loan license issued under this section is not assignable or transferable.

SECTION 8. IC 24-4.5-3-508 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 508. Loan Finance Charge for Supervised Loans–(1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is three hundred dollars ($300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than three hundred dollars ($300) but does not exceed one thousand dollars ($1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid

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balances of the principal which is more than one thousand dollars ($1000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) The amounts of three hundred dollars ($300) and one thousand dollars ($1,000) in subsection (2) and thirty dollars ($30) in subsection (7) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of thirty dollars ($30), the Reference Base Index to be used is the Index for October 1992.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars ($30). **The minimum loan finance charge allowed under this subsection may be imposed only if:**

(a) the borrower prepays in full a consumer loan, refinancing,

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or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;

(b) the loan, refinancing, or consolidation prepaid by the borrower is subject to a loan finance charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

SECTION 9. IC 24-4.5-6-106 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 106. Examinations – (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the books and records of persons and may make investigations of persons as may be necessary to determine compliance. The department may administer oaths or affirmations, subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation. The department shall determine the sufficiency of the records and whether the person has made the required information reasonably available. The records pertaining to any transaction subject to this article shall be retained for two (2) years after making the final entry relating to the consumer credit transaction, but in the case of a revolving loan account or revolving charge account, the two (2) years is measured from the date of each entry.

(2) ~~The~~ **If the** department: ~~may assess to~~

(a) investigates; or

(b) examines the books and records of;

a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203, ~~an examination~~ **the person shall pay all reasonably incurred costs of the investigation or examination in accordance with the** fee ~~as established~~ **schedule adopted** by the department under IC 28-11-3-5. ~~for each day or partial day by which the examination exceeds three (3) days per location to be examined.~~ However, the ~~examination fee provided for in~~ **person is liable for the costs of an investigation or examination under** this subsection ~~is payable~~ only to the extent that the ~~fee exceeds~~ **costs exceed** the amount of the filing fees paid most recently under IC 24-4.5-6-203.

(3) The department shall be given free access to the records wherever located. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient

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location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or its representative to examine them where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect them on behalf of the department.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the department may apply to (any civil) court for an order compelling compliance.

(5) The department shall not make public the name or identity of a person whose acts or conduct ~~he~~ **the department** investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

SECTION 10. IC 24-4.5-6-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 201. (1) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 apply to a person, including a supervised financial organization, **but not including a collection agency licensed under IC 25-11-1,** engaged in Indiana in any of the following:

(a) Making consumer credit sales, consumer leases, or consumer loans.

(b) Taking assignments of rights against debtors that arise from sales, leases, or loans by a person having an office or a place of business in Indiana. ~~and~~

(c) Undertaking direct collection of payments from the debtors or enforcement of rights against the debtors.

~~(c)~~ **(d)** Placing consumer credit insurance, receiving commissions for consumer credit insurance, or acting as a limited line credit insurance producer in the sale of consumer credit insurance.

(2) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller credit card issued by a person other than the seller if the issuer of the card has complied with the provisions of this section, IC 24-4.5-6-202, and IC 24-4.5-6-203.

(3) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 apply to a seller whose credit sales are made using credit cards that:

(a) are issued by a lender;

(b) are in the name of the seller; and

(c) can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

SECTION 11. IC 24-4.5-7-102 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 102. (1) Except as otherwise provided, all provisions of this article applying to consumer loans apply to small loans, as defined in this chapter.

(2) This chapter applies to:

(a) ~~all persons licensed to make loans under this article~~ **a lender** or to any person who facilitates, enables, or acts as a conduit for any ~~lender~~ **person** who is or may be exempt from licensing under IC 24-4.5-3-502;

(b) a bank, savings association, credit union, or other state or federally regulated financial institution except those that are specifically exempt regarding limitations on interest rates and fees; or

(c) a person, if the department determines that a transaction is:

(i) in substance a disguised loan; or

(ii) the application of subterfuge for the purpose of avoiding this chapter.

SECTION 12. IC 24-4.5-7-103, AS AMENDED BY P.L.2-2005, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 103. The following definitions apply to this chapter:

"Small loan"	Section 7-104
"Principal"	Section 7-105
"Check"	Section 7-106
"Renewal"	Section 7-107
"Consecutive small loan"	Section 7-108
"Paid in full"	Section 7-109
"Monthly gross income"	Section 7-110
"Lender"	**Section 7-111**

SECTION 13. IC 24-4.5-7-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 109. "Paid in full" means the termination of a small loan through:

(1) the ~~payment~~ **presentment** of the borrower's check **for payment** by the drawee bank or ~~authorized electronic transfer;~~ **the exercise by the lender of an authorization to debit an account of the borrower; or**

(2) the return of a check to a borrower who redeems it for consideration.

~~(3) the authorized debiting of the borrower's account; or~~

~~(4) any other method of termination.~~

SECTION 14. IC 24-4.5-7-111 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 111. "Lender" means a person**

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licensed by the department of financial institutions under this chapter to engage in small loans.

SECTION 15. IC 24-4.5-7-112 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 112. A lender is not considered a financial institution, except for purposes of IC 28-1.**

SECTION 16. IC 24-4.5-7-401 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 401. (1) A small loan may not be made for a term of less than fourteen (14) days.

(2) After the borrower's fifth consecutive small loan, another small loan may not be made to that borrower within seven (7) days after ~~the due date of~~ the fifth consecutive small loan **is paid in full.** After the borrower's fifth consecutive small loan, the balance must be paid in full. However, the borrower and lender may agree to enter into a simple interest loan, payable in installments, under IC 24-4.5-3 within seven (7) days after the due date of the fifth consecutive small loan.

SECTION 17. IC 24-4.5-7-404 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 404. (1) As used in this section, "commercially reasonable method of verification" means one (1) or more private consumer credit reporting services that the department determines to be capable of providing a lender with adequate verification information necessary to ensure compliance with subsection (4).

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

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

(4) A lender complies with subsection (3) if the borrower represents in writing that the borrower does not have any outstanding small loans with the lender, another lender, an affiliate of the lender or another lender, or a separate entity involved in a business association with the lender or another lender in making small loans, and the lender independently verifies the accuracy of the borrower's written representation through a commercially reasonable method of verification. A lender's method of verifying whether a borrower has any outstanding small loans will be considered commercially reasonable if

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the method includes a manual investigation or an electronic query of:

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

(b) available third party databases.

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

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

(b) require each lender to use, **consistent with the policies of the department,** one (1) of the identified commercially reasonable methods of verification as a means of complying with subsection (4).

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

SECTION 18. IC 24-4.5-7-406 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 406. **(a)** An agreement with respect to a small loan may not provide for charges as a result of default by the borrower other than those **specifically** authorized by this chapter. A provision in **a small loan agreement in** violation of this section is unenforceable.

(b) A lender may seek only the following remedies upon default by a borrower:

(1) Recovery of:

(A) the contracted principal amount of the loan; and

(B) the loan finance charge.

(2) Collection of a fee for:

(A) a returned check, negotiable order of withdrawal, or share draft; or

(B) a dishonored authorization to debit the borrower's account;

if contracted for under section 202 of this chapter.

(3) Collection of postjudgment interest, if awarded by a court.

(4) Collection of court costs, if awarded by a court.

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(c) A lender may not seek any of the following damages or remedies upon default by a borrower:

(1) Payment of the lender's attorney's fees.

(2) Treble damages.

(3) Prejudgment interest.

(4) Damages allowed for dishonored checks under any statute other than this chapter.

(5) Any damages or remedies not set forth in subsection (b).

(d) A contractual agreement in a small loan transaction must include a notice of the following in 14 point bold type:

(1) The remedies available to a lender under subsection (b).

(2) The remedies and damages that a lender is prohibited from seeking in a small loan transaction under subsection (c).

SECTION 19. IC 24-4.5-7-409 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 409. (1) This section applies to licensees and unlicensed persons.

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

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

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

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

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

~~(e) IC 35-43-5 (forgery, fraud, and other deceptions).~~

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

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

~~(4)~~ **(2)** A person who violates this chapter:

(a) is subject to a civil penalty up to two thousand dollars ($2,000) imposed by the department;

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

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

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

(e) is liable to the borrower for actual damages, statutory damages of two thousand dollars ($2,000) per violation, costs, and

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attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation.

~~(5)~~ **(3)** The department may sue:

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

(b) for other equitable relief.

~~(6)~~ **(4)** The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a borrower. A borrower is not required to exhaust any administrative remedies under this section or any other applicable law.

SECTION 20. IC 24-4.5-7-410 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 410. A lender making small loans shall not commit nor cause to be committed any of the following acts:

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

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

(c) Making a misleading or deceptive statement regarding a small loan or a consequence of taking a small loan.

(d) Contracting for ~~and~~ **or** collecting attorney's fees on small loans made under this chapter.

(e) Altering the date or any other information on a check or an authorization to debit the borrower's account held as security.

(f) Using a device or agreement that the department determines would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to:

(i) entering a different type of transaction with the borrower;

(ii) entering into a sales/leaseback arrangement;

(iii) catalog sales;

(iv) entering into transactions in which a customer receives a purported cash rebate that is advanced by someone offering Internet content services, or some other product or service, when the cash rebate does not represent a discount or an adjustment of the purchase price for the product or service; or

(v) entering any other transaction with the borrower that is designed to evade the applicability of this chapter.

(g) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a small loan.

(h) Charging to cash a check representing the proceeds of a small

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loan.

(i) Except as otherwise provided in this chapter:

(i) accepting the proceeds of a new small loan as payment of an existing small loan provided by the same lender; or

(ii) renewing, refinancing, or consolidating a small loan with the proceeds of another small loan made by the same lender.

(j) Including any of the following provisions in a loan document:

(i) A hold harmless clause.

(ii) A confession of judgment clause.

(iii) A mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the director of the department.

(iv) An assignment of or order for payment of wages or other compensation for services.

(v) A provision in which the borrower agrees not to assert a claim or defense arising out of contract.

(vi) A waiver of any provision of this chapter.

(k) Selling insurance of any kind in connection with the making or collecting of a small loan.

(l) Entering into a renewal with a borrower.

SECTION 21. IC 24-4.6-1-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 201. ~~The provisions of IC 1971, 24-5-2, ss. 21 through 24 and the provisions of IC 1971, 24-5-3 shall~~ **IC 24-5-2-21 through IC 24-5-2-24** apply to consumer credit sales, consumer leases, and assignees thereof.

SECTION 22. IC 24-5-23 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 23. Marketing by Mortgage Lenders

Sec. 1. As used in this chapter, "mortgage lender" means the original lender under a mortgage and the original lender's successors and assigns, including insurance companies, trust companies, banks, investment companies, savings banks, savings associations, credit unions, executors, trustees, and other fiduciaries, or any other mortgagee authorized to do business in this state.

Sec. 2. (a) Except as provided in subsection (b), a person, firm, limited liability company, or corporation may not use the name of an existing mortgage lender or a name confusingly similar to that of an existing mortgage lender when marketing to or soliciting business from a customer or prospective customer if the reference to the existing mortgage lender is:

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(1) without the consent of the existing mortgage lender; and

(2) made in a manner that could cause a reasonable person to believe that the marketing material or solicitation:

(A) originated from;

(B) is endorsed by; or

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

the existing mortgage lender.

(b) This section does not prohibit the use of or reference to the name of an existing mortgage lender in marketing materials or solicitations if the use or reference does not deceive or confuse a reasonable person regarding whether the marketing material or solicitation:

(1) originated from;

(2) is endorsed by; or

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

the existing mortgage lender.

(c) A mortgage lender whose name is used in violation of this section may bring an action to recover the greater of:

(1) two (2) times the amount of actual damages incurred by the mortgage lender as a result of the violation; or

(2) one thousand dollars ($1,000) plus attorney's fees.

(d) A mortgage lender that is a bank or a bank holding company is entitled to any relief available under both:

(1) subsection (c); and

(2) IC 28-1-20-4(m);

with respect to the same violation.

SECTION 23. IC 24-7-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) A lessor required to file a notification with the department under section 1 of this chapter shall pay to the department the following fees:

(1) A fee fixed by the department under IC 28-11-3-5 with the initial notification filed with the department.

(2) A fee fixed by the department under IC 28-11-3-5 for each place of business operated by the lessor on December 31 of the preceding year with each annual notification subsequently filed with the department.

(b) In addition to the fee required under subsection (a)(2), if the department examines the books and records of the lessor, ~~and requires more than three (3) days per location to conduct the examination,~~ the lessor shall pay to the department ~~a~~ **all reasonably incurred costs of the examination in accordance with the** fee ~~fixed~~ **schedule adopted** by the department under IC 28-11-3-5. ~~for each day or part of a day~~

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~~after the third day of the examination required for the department or the department's representative to conduct the department examination.~~

(c) The department may impose a fee of five dollars ($5) for each day a lessor is late in paying a fee under subsection (a). Notwithstanding the total number of places of business operated by a lessor, the department may not impose a late fee of more than five dollars ($5) for each day a lessor is **late in** paying a fee described under subsection (a)(2).

SECTION 24. IC 26-2-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. As used in this chapter, "financial institution" ~~has the meaning set forth~~ **refers to a financial institution (as defined** in IC 28-1-1-3) **that accepts deposits.**

SECTION 25. IC 26-2-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a)** As used in this chapter, "credit agreement" means an agreement to:

(1) lend or forbear repayment of money, goods, or things in action;

(2) otherwise extend credit; or

(3) make any other financial accommodation.

(b) The term includes an agreement to modify an agreement described in subsection (a).

SECTION 26. IC 26-2-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. **(a)** A debtor may ~~bring an action upon~~ **assert:**

(1) a claim for legal or equitable relief; or

(2) a defense in a claim;

arising from a credit agreement only if the **credit** agreement **at issue satisfies the requirements set forth in subsection (b).**

(b) A debtor may assert a claim or defense under subsection (a) only if the credit agreement at issue:

(1) is in writing;

(2) sets forth all material terms and conditions of the credit agreement, including the loan amount, rate of interest, duration, and security; and

(3) is signed by the creditor and the debtor.

SECTION 27. IC 28-1-1-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 3.5. Except as otherwise provided, for purposes of this title, a company is an affiliate of any financial institution or other person subject to this title if the company bears the same relationship to the financial institution or person subject to this**

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title as a company described in IC 28-1-18.2-1 bears to a bank.

SECTION 28. IC 28-1-2-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 6.5. (a) A financial institution (as defined in IC 28-1-1-3(1)), except for a licensee under IC 24-4.5, shall comply with all state and federal money laundering statutes and regulations, including the following:**

(1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).

(2) The USA Patriot Act of 2001 (P.L. 107-56).

(3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.

(4) Any other state or federal money laundering statutes or regulations that apply to a financial institution (as defined in IC 28-1-1-3(1)) other than a licensee under IC 24-4.5.

(b) The department shall do the following:

(1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance with, state money laundering statutes or regulations.

(2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:

(A) enforce compliance with the federal statutes or regulations; or

(B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

SECTION 29. IC 28-1-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) Every corporation has the capacity to act that is possessed by a natural person, but has the authority to perform only those acts that are necessary, convenient, or expedient to accomplish the purposes for which it is formed and that are not repugnant to law.

(b) Subject to any limitations or restrictions imposed by law or by the articles of incorporation, each corporation has the following general rights, powers, and privileges:

(1) To continue as a corporation, under its corporate name, for the period limited in its articles of incorporation, or, if the period is not so limited, then perpetually.

(2) To sue and be sued in its corporate name.

(3) To have a corporate seal and to alter such seal at its pleasure.

(4) To acquire, own, hold, use, lease, mortgage, pledge, sell, convey, or otherwise dispose of property, real and personal,

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tangible and intangible, in the manner and to the extent hereinafter provided.

(5) To borrow money and to mortgage or pledge its property to secure the payment thereof, in the manner and to the extent hereinafter provided; but no financial institution having power to accept deposits of money shall pledge any of the assets of such financial institution as security for the safekeeping and prompt payment of any money so deposited, except that any such financial institution may, for the safekeeping and prompt payment of any money so deposited, give security of the kind authorized by any statute of this state or by the Congress of the United States.

(6) To conduct business in this state and elsewhere.

(7) To appoint such officers and agents as the business of the corporation may require **and to do the following with respect to any officers or agents appointed:**

~~to~~ **(A)** Define their duties.

~~to~~ **(B)** Fix their compensation, which may include compensation paid pursuant to any plan of deferred compensation approved by ~~its~~ **the corporation's** board of directors.

~~to~~ **(C)** Enter into employment contracts with ~~its~~ **the corporation's** officers and agents which set forth terms and conditions of employment.

~~to~~ **(D)** Provide ~~it's~~ **the corporation's** officers, agents, and employees with individual or group life insurance.

~~and to~~ **(E)** Procure and maintain in effect for the benefit of the bank, insurance on the life or lives of designated officers **or directors.**

(8) To make bylaws for the government and regulation of its affairs.

(9) To cease doing business and to dissolve and surrender its corporate franchise.

(10) To do all acts and things necessary, convenient, or expedient to carry out the purposes for which it is formed.

(c) Subject to any limitations or restrictions that the department may impose by rule or policy, each corporation may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the corporation's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits

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approved by the corporation's board of directors.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

SECTION 30. IC 28-1-11-3.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3.1. (a) Any bank or trust company shall have the power to discount, negotiate, sell and guarantee promissory notes, bonds, drafts, acceptances, bills of exchange, and other evidences of debt; to buy and sell, exchange, coin and bullion; to loan money; to borrow money and to issue its notes, bonds, or debentures to evidence any such borrowing and to mortgage, pledge, or hypothecate any of its assets to secure the repayment thereof; to receive savings deposits and deposits of money subject to check, and deposits of securities or other personal property from any person or corporation, upon such terms as may be agreed upon by the parties; to contract for and receive on loans and discounts the highest rate of interest allowed by the laws of this state to be contracted for and received by individuals; to accept, for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, however, the letter of credit must state a specific expiration date; and to exercise all the powers incidental and proper or which may be necessary and usual in carrying on a general banking business, but it shall have no right to issue bills to circulate as money.

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

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

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

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

(4) To extend credit to any state agency, with the approval of the department, notwithstanding any other provisions or limitations

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of IC 28-1. No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, shall be deemed to apply to loans, advances of credit, or purchases made pursuant to subdivisions (1), (2), and (3) and this subdivision.

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

(6) To adopt stock purchase programs for employees and to grant options to purchase, and to issue and sell, shares of its capital stock to its employees, or to a trustee on their behalf (which may be the bank or trust company issuing such capital stock), without first offering the same to its shareholders, for such consideration, not less than par value, and upon such terms and conditions as shall be approved by its board of directors and by the holders of a majority of its shares entitled to vote with respect thereto, and

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by the department. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuances of such options and the sufficiency thereof shall be conclusive. Any bank or trust company exercising the powers granted in this subsection may, to the extent approved by the department, have authorized and unissued stock required to fulfill any stock option or other arrangement authorized herein.

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

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

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

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

(B) to be used, in part, as a branch **or the principal office** of that bank or trust company and, in part, as rental property for one (1) ~~lessee.~~ **or more lessees.**

Unless a written extension of time is given by the department, the bank or trust company shall open ~~its~~ **the** branch **or principal office** within two (2) years from the acquisition date of the real estate. If the bank or trust company does not open a branch **or its principal office** on the real estate in that time period or if the bank or trust company removes its branch **or principal office** from the real estate, the bank or trust company shall divest itself of all interest in the real estate within five (5) years from the acquisition date of the real estate, if a branch was not opened, or five (5) years from the removal date of the branch office, **whichever applies.** Except with the written approval of the department, the sum invested in real estate and buildings used for the convenient transaction of its business as provided in this subdivision shall not exceed fifty percent (50%) of the sound capital of ~~that~~ **the** bank or trust company as provided in section 5 of this chapter.

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

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

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

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

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

(c) Investments by a bank or trust company under subsection ~~(b)(10)~~ **(b)(9)** may exceed the limit set forth in subsection ~~(b)(10)(B)~~ **(b)(9)(B)** if the director determines that:

(1) the aggregate investments by the bank or trust company under subsection ~~(b)(10)~~ **(b)(9)** in excess of five percent (5%) of the capital and surplus of the bank or trust company will not pose a significant risk to the affected deposit insurance fund; and

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

However, in no case shall the aggregate investments by a bank or trust company under subsection ~~(b)(10)~~ **(b)(9)** exceed ten percent (10%) of the capital and surplus of the bank or trust company.

(d) A bank or trust company shall not make any investment under subsection ~~(b)(10)~~ **(b)(9)** if the investment would expose the bank or trust company to unlimited liability.

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

SECTION 31. IC 28-1-20-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Except as provided in subsections (c), (d), (g), and (k), it is unlawful for any person, firm, limited liability company, or corporation (other than a bank or trust company, a bank holding company, a subsidiary of a bank or trust company, a subsidiary of a bank holding company, a subsidiary of a savings bank, a subsidiary of a savings association, or a corporate fiduciary organized or reorganized under IC 28 or statutes in effect at the time of organization or reorganization or under the laws of the United States):

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

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

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

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

(b) A financial institution organized under the laws of any state or the United States ~~that establishes a branch office under this title~~ is authorized to do business **in Indiana:**

(1) at ~~that~~ **its principal office;**

(2) at any branch **office; or**

(3) otherwise;

using a name other than ~~the~~ **its official entity** name ~~of its home office.~~ **if the financial institution notifies the department at least ten (10) days before using the other name.**

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

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

(1) the words "savings bank"; or

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

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

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

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

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

(h) The department is authorized to investigate the business affairs of any person, firm, limited liability company, or corporation that uses

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

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

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

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

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

(1) without the consent of the existing bank or bank holding company; and

(2) in a manner that could cause a reasonable person to believe that the marketing material or solicitation:

(A) originated from;

(B) is endorsed by; or

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

the existing bank or bank holding company.

(m) An existing bank or bank holding company may, in addition to

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any other remedies available under the law, report an alleged violation of subsection (l) to the department. If the department finds that the marketing material or solicitation in question is in violation of subsection (l), the department may direct the person, firm, limited liability company, or corporation to cease and desist from using that marketing material or solicitation in Indiana. If that person, firm, limited liability company, or corporation persists in using the marketing material or solicitation, the department may impose a civil penalty of up to fifteen thousand dollars ($15,000) for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer constitutes a separate violation of subsection (l).

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

(1) originated from;

(2) is endorsed by; or

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

the existing bank or bank holding company.

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

SECTION 32. IC 28-1-23.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 23.5. Electronic Activity by Financial Institutions

Sec. 1. This chapter applies to the following financial institutions:

(1) A bank operating under IC 28-1-11.

(2) A credit union operating under IC 28-7-1.

(3) A savings bank operating under IC 28-6.1.

(4) A savings association operating under IC 28-15.

Sec. 2. As used in this chapter, "electronic activity" refers to:

(1) any activity or function that a financial institution performs through electronic means or facilities; or

(2) the provision or delivery of any product or service by a financial institution through the use of electronic technology.

Sec. 3. An electronic activity performed by a financial institution must be consistent with the following:

(1) Standards used by the department to determine whether a financial institution is operating or will operate in a safe and

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sound condition.

(2) State and federal consumer protection laws and regulations.

(3) State or federal supervisory guidance considered necessary or appropriate by the director.

Sec. 4. (a) The director may determine whether an electronic activity by a financial institution is permitted under:

(1) IC 28-1-11, with respect to a bank;

(2) IC 28-7-1, with respect to a credit union;

(3) IC 28-6.1, with respect to a savings bank;

(4) IC 28-15, with respect to a savings association; or

(5) any other state statute that applies to a financial institution described in subdivisions (1) through (4).

(b) The director may establish standards or conditions designed to ensure that the electronic activities of financial institutions are:

(1) transacted as intended; and

(2) conducted safely and soundly, in accordance with other applicable statutes, regulations, or supervisory policies.

Sec. 5. (a) An electronic activity is authorized for a financial institution as part of the financial institution's business if the activity is described in:

(1) IC 28-1-11, with respect to a bank;

(2) IC 28-7-1, with respect to a credit union;

(3) IC 28-6.1, with respect to a savings bank;

(4) IC 28-15, with respect to a savings association; or

(5) any other state statute that applies to a financial institution described in subdivisions (1) through (4).

(b) In determining whether an electronic activity is authorized as part of a financial institution's business, the director shall consider the following:

(1) Whether the activity is functionally equivalent to, or a logical outgrowth of, a recognized activity of the type of financial institution under consideration.

(2) Whether the activity strengthens the financial institution by benefiting its customers or its business.

(3) Whether the activity involves risks similar in nature to those already assumed by the type of financial institution under consideration.

(4) Whether the activity may be conducted by:

(A) the same, or functionally equivalent type, of federally chartered financial institution; or

(B) the same, or functionally equivalent type, of financial

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institution that:

(i) is organized or reorganized under the laws of another state; and

(ii) does business in Indiana;

under the authority of applicable federal or state statutes, regulations, or supervisory policies.

Sec. 6. (a) An electronic activity is authorized for a financial institution as incidental to the financial institution's business if the activity is convenient or useful to an activity that is:

(1) specifically authorized for the type of financial institution under consideration; or

(2) otherwise part of the business of the type of financial institution under consideration.

(b) In determining whether an electronic activity is authorized as incidental to a financial institution's business, the director may consider whether the activity:

(1) facilitates the production or delivery of the financial institution's products or services;

(2) enhances the financial institution's ability to sell or market its products or services;

(3) improves the effectiveness or efficiency of the financial institution's operations; or

(4) enables the financial institution to:

(A) use capacity acquired for its operations as a financial institution; or

(B) otherwise avoid economic loss or waste.

Sec. 7. (a) As used in this section, "potential risks", with respect to a proposed electronic activity by a financial institution, include the following:

(1) Legal risks.

(2) Transactional risks.

(3) Risk of the financial institution's noncompliance with applicable statutes, regulations, or supervisory policies.

(4) Risk of harm to the financial institution's reputation.

(b) A financial institution's board of directors and executive officers are responsible for ensuring that all potential risks are evaluated and taken into account before the financial institution undertakes any electronic activity. The board of directors and the executive officers may not delegate their responsibility under this subsection to other persons within the financial institution or to outside parties.

(c) After a financial institution's board of directors and

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executive officers have acted under subsection (b) to conduct an evaluation of the potential risks associated with an electronic activity, the financial institution may perform, provide, or deliver through electronic means or facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver, subject to this chapter and any other applicable statutes, regulations, or supervisory policies.

Sec. 8. (a) A financial institution described in section 1(1), 1(3), or 1(4) of this chapter may perform, provide, or deliver through electronic means or facilities any activity, function, product, or service that a national bank is specifically authorized to perform, provide, or deliver under 12 CFR 7.5000 et seq.

(b) A financial institution described in section 1(2) of this chapter may perform, provide, or deliver through electronic means or facilities any activity, function, product, or service that a federal credit union is specifically authorized to perform, provide, or deliver under Part 721 of the National Credit Union Administration's regulations (12 CFR 721.1 et seq.).

Sec. 9. A financial institution may perform, provide, or deliver through electronic means or facilities any activity, function, product, or service that it is otherwise authorized or required to perform, provide, or deliver by nonelectronic means or facilities, subject to the following:

(1) The approval of the customer or member to or for whom the activity, function, product, or service is performed, provided, or delivered.

(2) The:

(A) safety and soundness requirements; and

(B) state or federal supervisory guidance;

that the director would apply if the activity were conducted by nonelectronic means or facilities.

SECTION 33. IC 28-1-29-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) No person shall operate a budget service company in the state of Indiana without having obtained a license from the department. The director may request evidence of compliance with this section at:

(1) the time of application; ~~or after a license is issued. The evidence~~

(2) the time of renewal of a license; or

(3) any other time considered necessary by the director.

(b) For purposes of subsection (a), evidence of compliance **with this section** may include: ~~but is not limited to, an official report of~~

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~~criminal activity from the state in which the applicant resides.~~

(1) criminal background checks, including a national criminal history check by the Federal Bureau of Investigation;

(2) credit histories; and

(3) other background checks considered necessary by the director.

(c) The fee for a license or renewal shall be fixed by the department under IC 28-11-3-5 and shall be nonrefundable. A licensee failing to renew annually shall be required to pay a fee fixed by the department under IC 28-11-3-5 for a new application.

~~(b)~~ **(d)** If a person knowingly acts as a budget service company in violation of this chapter, any agreement the person has made under this chapter is void and the debtor under the agreement is not obligated to pay any fees. If the debtor has paid any amounts to the person, the debtor, or the department on behalf of the debtor, may recover the payment from the person that violated this section.

~~(c)~~ **(e)** A license issued under this section is not assignable or transferable.

SECTION 34. IC 28-1-29-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. **(a)** Every person doing business as a budget service company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the department and shall contain ~~the following information together with~~ such ~~further~~ information as the department may require.

~~(1)~~ **(b)** The department may not issue a license unless the department finds that the financial responsibility, character, and fitness of:

~~(A)~~ **(1)** the applicant; and

~~(B)~~ **(2)** the:

~~(i)~~ **(A)** members of the applicant, if the applicant is a partnership or association; or

~~(ii)~~ **(B)** officers and directors of the applicant, if the applicant is a corporation;

warrant belief that the business will be operated honestly and fairly under this article. The department is entitled to request evidence of ~~a licensee's~~ **an applicant's** financial responsibility, character, and fitness.

(c) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

~~(2)~~ **(d)** Upon written request, an applicant is entitled to a hearing

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under IC 4-21.5 on the question of the qualifications of the applicant for a license.

SECTION 35. IC 28-1-29-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. The department ~~will~~ **may** examine all books, records, and accounts of any person doing business as a budget service company at least once a year. The cost of such examination will be paid by the company upon a fee basis fixed by the department under IC 28-11-3-5. The record keeping system of a licensee shall be made available in Indiana for examination. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. For the purpose of discovering violations of this chapter and securing information necessary for the enforcement of this chapter, the department may investigate:

(1) a licensee; or

(2) a person that the department suspects is operating without a valid license ~~and~~ **or** in violation of this chapter.

SECTION 36. IC 28-6.1-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14. (a) A savings bank may solicit and write insurance as an insurance producer or a broker for any insurance company authorized to do business in the state or states where the insurance producer or broker operates.

(b) A savings bank or its affiliate (as defined in IC 28-6.2-1-4) may act as an insurance producer for the sale of any life insurance policy or annuity contract issued by a life insurance company (as defined in IC 27-1-2-3) authorized to do business in the state or states where the insurance producer operates.

(c) A savings bank or its affiliate that acts as an insurance producer for the sale of a life insurance policy or an annuity contract under subsection (b):

(1) is subject to all requirements of IC 27 with respect to the insurance producer's activity in Indiana; and

(2) must comply with the disclosure requirements under IC 27-1-38.

(d) A savings bank or its affiliate may not condition:

(1) an extension of credit;

(2) a lease or sale of real or personal property;

(3) the performance of a service; or

(4) the amount charged for:

(A) extending credit;

(B) leasing or selling real or personal property; or

(C) performing services;

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upon a person's purchase of a life insurance policy or an annuity contract from the savings bank or its affiliate.

(e) This section does not prohibit a savings bank or its affiliate from requiring that a person, as a condition to a transaction, obtain a life insurance policy from an insurance company acceptable to the savings bank or its affiliate.

(f) Subject to any limitations or restrictions that the department may impose by rule or policy, a savings bank may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the savings bank's board.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the savings bank's board.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

SECTION 37. IC 28-7-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 2.5. Conservatorship of Credit Unions

Sec. 1. This chapter applies to a credit union (as defined in IC 28-7-1-0.5(3)).

Sec. 2. Except as otherwise provided, the definitions in IC 28-7-1 apply throughout this chapter.

Sec. 3. (a) The department may appoint a conservator for a credit union if the department determines that:

(1) one (1) or more grounds for the appointment of a receiver under IC 28-1-3.1-2(a) exist with respect to the credit union; or

(2) the appointment of a conservator is necessary to conserve the assets of the credit union for the benefit of the members, depositors, and other creditors of the credit union.

(b) A conservator appointed under this section shall give any bond or security that the department considers appropriate.

(c) The department may appoint any of the following as a conservator under this section:

(1) A private insurance company authorized to insure deposits or share accounts in Indiana.

(2) The National Credit Union Administration or its

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successor.

(3) Any competent and disinterested person.

Sec. 4. (a) A conservator appointed by the department under this chapter shall reimburse the department for all amounts expended by the department in connection with the conservatorship. Amounts reimbursed to the department under this subsection shall be paid from the assets of the credit union as administrative expenses. Upon approval of the department, the conservator shall pay all other administrative expenses of the conservatorship from the assets of the credit union.

(b) Administrative expenses described in this section constitute a first charge against the assets of the credit union. The conservator shall pay the administrative expenses in full before any:

(1) final distribution of the credit union's assets; or

(2) payment of dividends to members, depositors, and other creditors of the credit union.

Sec. 5. (a) Under the direction of the department, a conservator appointed under this chapter shall:

(1) take possession of the books, records, and assets of the credit union; and

(2) take any action necessary to conserve the assets of the credit union pending:

(A) a liquidation under IC 28-1-3.1; or

(B) other disposition of the credit union's business as provided by law.

(b) A conservator appointed under this chapter:

(1) has all the rights, powers, and privileges of a receiver appointed under IC 28-1-3.1, except the power to liquidate a credit union; and

(2) is subject to those obligations and liabilities to which a receiver is subject, to the extent the obligations and liabilities are consistent with this chapter.

(c) Throughout the time a conservator is in possession of a credit union under this chapter, the rights of all parties with respect to the credit union are the same as if a receiver had been appointed under IC 28-1-3.1.

Sec. 6. (a) While a credit union is in conservatorship under this chapter, the department may require the conservator to set aside and make available for:

(1) withdrawal by members and depositors; or

(2) payment to other creditors;

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on a pro rata basis, any amounts that, in the opinion of the department, may be safely and prudently used for the purposes described in subdivisions (1) through (2).

(b) The department may permit a conservator appointed under this chapter to receive new shares and deposits after the credit union is placed in conservatorship. Shares and deposits received by a conservator while a credit union is in conservatorship are not subject to any limitation with respect to payment or withdrawal. The conservator shall segregate any:

(1) shares or deposits; or

(2) new assets acquired on account of shares and deposits;

received after the credit union is placed in conservatorship from the shares, deposits, and assets held by the credit union at the time the credit union is placed in conservatorship.

(c) A conservator shall not use any shares, deposits, or assets received after the credit union is placed in conservatorship to:

(1) liquidate any indebtedness of the credit union existing at the time the credit union is placed in conservatorship; or

(2) pay any subsequent indebtedness incurred to liquidate any indebtedness of the credit union existing at the time the credit union is placed in conservatorship.

(d) Any shares or deposits received after a credit union is placed in conservatorship shall be:

(1) kept in cash;

(2) invested in direct obligations of the United States; or

(3) deposited in depository institutions designated by the department.

(e) If a credit union placed in conservatorship under this chapter is returned to the control of the credit union's board of directors, the protections provided under subsections (b), (c), and (d) (with respect to shares and deposits received while the credit union is in conservatorship) do not apply after fifteen (15) days after the date control of the credit union is returned to the board. Before returning control of the credit union to the credit union's board, the conservator shall publish a notice, in a form approved by the department, stating:

(1) the date on which the affairs of the credit union will be returned to the control of the credit union's board; and

(2) that the protections provided under subsections (b), (c), and (d) (with respect to shares and deposits received while the credit union is in conservatorship) do not apply after fifteen (15) days after the date identified under subdivision (1).

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The conservator shall send, by United States mail, a copy of the notice to every person that purchased shares or deposited money in the credit union after the credit union is placed in conservatorship and before control of the credit union is returned to the credit union's board.

Sec. 7. With the prior approval of the department, a conservator appointed under this chapter may borrow money as necessary or expedient to aid in the operation or reorganization of the credit union. Any loan obtained by the conservator under this section may be secured by the pledge or mortgage of, or through a lien upon or security interest in, the assets of the credit union.

Sec. 8. (a) The department may:

(1) terminate a conservatorship ordered under this chapter; and

(2) permit the credit union subject to the conservatorship to resume the transaction of the credit union's business, subject to any terms, conditions, restrictions, and limitations that the department may prescribe;

if the department is satisfied that a termination of the conservatorship may be done safely and is in the public interest.

(b) Subject to subsection (c), the department may:

(1) terminate a conservatorship ordered under this chapter; and

(2) apply for the appointment of a receiver for the credit union under IC 28-1-3.1;

if the department determines that the appointment of a receiver for the credit union is in the public interest.

(c) If the department determines that the liquidation of a credit union placed in conservatorship under this chapter is in the public interest, the department shall:

(1) terminate the conservatorship ordered under this chapter; and

(2) apply for the appointment of a receiver for the credit union under IC 28-1-3.1.

Sec. 9. The department may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 38. IC 28-7-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. In this chapter, unless the context otherwise requires:

"**Director" refers to the director of the department.**

"Pawnbroker" means any person, partnership, association, or corporation lending money on the deposit or pledge of personal

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property, or who deals in the purchase of personal property on the condition of selling the property back again at a stipulated price, other than choses in action, securities, or printed evidence of indebtedness.

"Pledge" means personal property deposited with a pawnbroker as security for a loan.

"Pledger" means the person who delivers personal property into the possession of a pawnbroker as security for a loan unless such person discloses that the person is or was acting for another; and in such event "pledger" means the disclosed principal.

"Department" means the department of financial institutions.

"Person" means an individual, a firm, an association, a limited liability company, a partnership, a joint stock association, a trust, or a corporation.

"Month" means a period extending from a given date in one (1) calendar month to the like date in the succeeding calendar month or, if there is no such like date, then to the last day of the succeeding calendar month. For purposes of this chapter, each month is considered to have thirty (30) days.

SECTION 39. IC 28-7-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Application for a pawnbroker's license shall be submitted on a form prescribed by the department and must include all information required by the department. **An application submitted under this section must identify the location or locations at which the applicant proposes to engage in business as a pawnbroker in Indiana. If any business, other than the business of acting as a pawnbroker under this chapter, will be conducted by the applicant or another person at any location identified under this subsection, the applicant shall indicate for each location at which another business will be conducted:**

(1) the nature of the other business;

(2) the name under which the other business operates;

(3) the address of the principal office of the other business;

(4) the name and address of the business's resident agent in Indiana; and

(5) any other information the director may require.

(b) The director may request that the applicant provide evidence of compliance with this section at:

(1) the time of application; ~~or after a license is issued.~~

(2) the time of renewal of a license; or

(3) any other time considered necessary by the director.

(c) For purposes of subsection (b), evidence of compliance **with**

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this section ~~includes.~~ **may include:** ~~but is not limited to, an official report of criminal activity from the state where the applicant resides.~~

(1) criminal background checks, including a national criminal history check by the Federal Bureau of Investigation;

(2) credit histories; and

(3) other background checks considered necessary by the director.

SECTION 40. IC 28-7-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. **(a)** The initial application and **any** renewal **application** shall be accompanied by a fee fixed by the department under IC 28-11-3-5. ~~and~~ **The initial application and any renewal application must include** a financial statement **that:**

(1) is prepared in accordance with standards adopted by the director;

(2) indicates the applicant meets minimum financial responsibility standards adopted by the director; and

(3) is prepared by a third party acceptable to the director.

(b) The initial application and any renewal application must be accompanied by proof that the applicant:

(1) has executed a bond, payable to the state, in an amount determined by the director; and

(2) has obtained property and casualty insurance coverage, in an amount determined by the director;

in accordance with standards adopted by the director.

(c) Any standards adopted by the director and described in subsection (a)(1), (a)(2), or (b) must be made available:

(1) for public inspection and copying at the offices of the department under IC 5-14-3; and

(2) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

SECTION 41. IC 28-7-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. **(a)** Upon ~~the~~ **an applicant's** filing of the application required by section 4 of this chapter and ~~the~~ payment of the license fee, if the department ~~shall find~~ **finds** the financial standing, competence, business experience, and character of the applicant are such that the business will be operated honestly, fairly, and efficiently and that the convenience and needs of the public exist for the operation of ~~such~~ **the** business in the community wherein ~~such~~ **the** applicant proposes to operate, it shall issue and deliver a license to the applicant, which license shall authorize the applicant to engage in the business of pawnbroking. The director is

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entitled to request evidence of compliance with the requirements of this section by the licensee ~~Such~~ **at:**

(1) the time of issuance of the license;

(2) the time of renewal of the license; or

(3) any other time considered necessary by the director.

A license shall remain in effect until it is surrendered, revoked, or suspended. If the department denies the application, it shall notify the applicant of the denial and return the sum paid by the applicant as a license fee. The department may hold a public hearing if the department considers the hearing necessary.

(b) The department may deny an application under this section if the director determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

SECTION 42. IC 28-7-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. Whenever a licensee:

(1) changes its place of business to another location; **or**

(2) adds one (1) or more business locations;

the licensee shall give written notice to the department. **Not later than thirty (30) days before the relocation or addition of one (1) or more business locations under this section,** the licensee shall request approval in a form prescribed by the director to add or change one (1) or more business locations.

SECTION 43. IC 28-7-5-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 10.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:**

(1) Any business, other than the business of acting as a pawnbroker under this chapter, will be conducted by the licensee or another person at any location in Indiana in which the licensee conducts the business of acting as a pawnbroker under this chapter.

(2) Any information concerning other business conducted at the locations identified in the licensee's application under section 4(a) of this chapter changes.

(b) For each location described in subsection (a)(1) or (a)(2), the licensee shall provide to the department the information required under section 4(a) of this chapter with respect to that location:

(1) not later than fifteen (15) days after the other business begins operating at the location; or

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(2) if the licensee's next license renewal fee under section 11 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 11 of this chapter.

SECTION 44. IC 28-7-5-13.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13.1. (a) A license issued by the department under this chapter shall be revoked by the department if the ~~person~~ **licensee** fails to:

(1) file any renewal form required by the department; or

(2) pay any license renewal fee described under section 11 of this chapter;

for a period of at least ~~two (2) years.~~ **six (6) months.**

(b) A person whose license is revoked under this section may:

(1) pay all delinquent fees and apply for a new license; or

(2) appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

SECTION 45. IC 28-7-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15. (a) For the purpose of discovering violations of this chapter and securing information necessary for the enforcement of this chapter, the department may investigate:

(1) any licensee; or

(2) any person that it suspects to be operating without a license ~~and~~ **or** in violation of this chapter.

The department has all investigatory and enforcement authority under IC 28-11 for financial institutions. **If the department conducts an investigation under this section, the licensee or person investigated shall pay all reasonably incurred costs of the investigation in accordance with the fee schedule adopted under IC 28-11-3-5.**

(b) If a person knowingly makes a pawn loan without the license required by section 3 of this chapter, the loan made in violation of this chapter is void and the debtor is not obligated to pay the principal amount of the loan, any finance charge on the loan, or any additional fee under section 28.5 of this chapter. The debtor, or the department on behalf of the debtor, may recover any amount paid to the person who knowingly violated section 3 of this chapter.

SECTION 46. IC 28-7-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. (a) The licensee shall keep and use in his business such books, accounts, and records as will enable the department to determine whether the licensee is

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complying with this chapter and with the rules ~~made~~ **adopted** by the department under this chapter. Every licensee shall preserve such books, accounts, and records, including cards used in the card system for at least two (2) years after making the final entry on any loan recorded therein. The books and records of the licensee shall be kept so that the pawnbroking business transacted in Indiana may be readily separated and distinguished from the business of the licensee transacted elsewhere and from any other business in which the licensee may be engaged. **To determine whether the licensee is complying with this chapter and with rules adopted by the department under this chapter, the department may examine the books, accounts, and records required to be kept by the licensee under this subsection. If the department examines the books, accounts, and records of the licensee under this subsection, the licensee shall pay all reasonably incurred costs of the examination in accordance with the fee schedule adopted under IC 28-11-3-5.**

(b) If a pawnbroker, in the conduct of the business, purchases an article from a seller, the purchase shall be evidenced by a bill of sale properly signed by the seller. All bills of sale must be in duplicate and must recite the following separate items:

(1) Date of bill of sale.

(2) Amount of consideration.

(3) Name of pawnbroker.

(4) Description of each article sold. However, if multiple articles of a similar nature that do not contain an identification or serial number (such as precious metals, gemstones, musical recordings, video recordings, books, or hand tools) are delivered together in one (1) transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any other unique identifying marks, numbers, names, letters, or special features.

(5) Signature of seller.

(6) Address of seller.

(7) Date of birth of the seller.

(8) The type of government issued identification used to verify the identity of the seller, together with the name of the governmental agency that issued the identification, and the identification number present on the government issued identification.

(c) If a pawnbroker, in the conduct of the business, purchases an article from a seller on the condition of selling the property back at a stipulated price, the transaction shall be evidenced by a bill of sale

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properly signed by the seller. All such bills of sale must be in duplicate and recite the information in subsection (b) and must also contain the following information:

(1) Date of resale.

(2) Amount of resale.

(d) The original copy of the bill of sale shall be retained by the pawnbroker. The second copy shall be delivered to the seller by the pawnbroker at the time of sale. The heading on all bill of sale forms must be in boldface type.

(e) Each licensee shall maintain a record of control indicating the number of accounts and dollar value of all outstanding pawnbroking receivables. Each licensee shall maintain a separate record of transactions subject to subsection (c).

SECTION 47. IC 28-7-5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 21. (a) The pawnbroker shall, at the time of making a loan, deliver to the pledger or the pledger's agent a memorandum or ticket on which shall be legibly written or printed **the following information:**

(1) The name of the pledger.

(2) The name of the pawnbroker and the place where the pledge is made.

(3) The article or articles pledged, and a description of the articles. However, if multiple articles of a similar nature that do not contain an identification or serial number (such as precious metals, gemstones, musical recordings, video recordings, books, or hand tools) are delivered together in one (1) transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any other unique identifying marks, numbers, names, letters, or special features.

(4) The amount of the loan.

(5) The date of the transaction.

(6) The serial number of the loan.

(7) The sum of the interest as provided in section 28 of this chapter and the charge as provided in section 28.5 of this chapter stated as an annual percentage rate computed in accordance with regulations issued by the Federal Reserve Board under the Federal Consumer Credit Protection Act (as defined in IC 24-4.5-1-302).

(8) The amount of interest.

(9) The amount of charge and principal due at maturity.

(10) A copy of sections 28, 28.5, and 30 of this chapter.

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(11) The date of birth of the pledger.

(12) The type of government issued identification used to verify the identity of the ~~seller,~~ **pledger,** together with the name of the governmental agency that issued the identification, and the identification number present on the government issued identification. ~~and~~

(13) The **last** date on which the pledged article or articles may be **redeemed before the article or articles may be** sold if the loan is not redeemed, renewed, or extended. ~~and~~ The language **setting forth the information described in this subdivision** must be in 14 point boldface type.

(b) A pawnbroker may insert in such ticket any other terms and conditions not inconsistent with this chapter. However, nothing appearing on a pawn ticket shall relieve the pawnbroker of the obligations to exercise reasonable care in the safekeeping of articles pledged with ~~him.~~ **the pawnbroker.**

SECTION 48. IC 28-7-5-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 30. **(a) Subject to subsection (b),** upon the expiration of two (2) months from the maturity of the loan, a pawned article becomes the property of the pawnbroker and is subject to sale.

(b) Subsection (a) applies only if the pledger is given a reasonable opportunity during:

(1) the term of the loan; and

(2) the two (2) month period described in subsection (a);

to repay the loan and redeem the pawned article.

SECTION 49. IC 28-7-5-37.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 37.5. (a) A licensee shall comply with all state and federal money laundering statutes and regulations, including the following as they become applicable to licensees under this chapter:**

(1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).

(2) The USA Patriot Act of 2001 (P.L. 107-56).

(3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.

(4) Any other state or federal money laundering statutes or regulations that apply to a licensee.

(b) The department shall do the following:

(1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance

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with, state money laundering statutes or regulations.

(2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:

(A) enforce compliance with the federal statutes or regulations; or

(B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

SECTION 50. IC 28-7-5-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 38. The department may bring a civil action, **including an action for injunctive relief, on the department's own behalf or on behalf of a pledger,** against a person, a business, or a licensee for violating this chapter. If a court finds that the defendant has violated this chapter, the court may assess a civil penalty not to exceed five thousand dollars ($5,000) per violation.

SECTION 51. IC 28-8-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) This chapter does not apply to the following:

(1) The United States or an instrumentality of the United States.

(2) The state, a political subdivision of the state, or an instrumentality of the state or of a political subdivision of the state.

(3) A bank, a bank holding company, an industrial loan and investment company, a credit union, a savings association, a savings bank, a mutual bank, or a mutual savings bank organized under the laws of any state or the United States.

(4) A stored value card issued by a state or federally chartered financial institution.

(b) Unless otherwise provided in this chapter, this chapter does not apply to an authorized delegate of a person:

(1) licensed under this chapter or excluded under subsection (a); and

(2) acting within the scope of authority conferred by a written contract conforming to the requirements of section 49 of this chapter.

SECTION 52. IC 28-8-4-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 3.5. As used in this chapter, "closed system stored value card" refers to a stored value card the use of which is limited to one (1) or more specified merchants or locations.**

SECTION 53. IC 28-8-4-15 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15. (a) As used in this chapter, "payment instrument" means:

(1) a check;

(2) a draft;

(3) a money order;

(4) a traveler's check; ~~or~~

(5) a stored value card, other than a closed system stored value card; or

~~(5)~~ **(6)** an instrument or written order for the transmission or payment of money;

sold or issued to one (1) or more persons, whether such instrument is negotiable.

(b) As used in this chapter, "payment instrument" does not include:

(1) a credit card voucher;

(2) a letter of credit; ~~or~~

(3) an instrument that is redeemable by the issuer in goods or services; **or**

(4) a closed system stored value card.

SECTION 54. IC 28-8-4-19.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 19.5. As used in this chapter, "stored value card" means a card or device that:**

(1) may be used by a holder to:

(A) perform financial transactions; or

(B) obtain, purchase, or receive money, goods, or services; in an amount or having a value that does not exceed the dollar value of the card; and

(2) has a magnetic stripe or computer chip that enables dollar values to be electronically added to or deducted from the dollar value of the card.

SECTION 55. IC 28-8-4-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 20. (a) A person may not engage in the business of money transmission without a license required by this chapter.

(b) An application for a license must be submitted on a form prescribed by the department and must include the information required by the department.

(c) The director may request that the applicant provide evidence of compliance with this section at:

(1) the time of application; ~~or after a license is issued. Evidence~~

(2) the time of renewal of a license; or

(3) any other time considered necessary by the director.

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(d) For purposes of subsection (c), evidence of compliance ~~includes: but is not limited to, an official report of criminal activity from the state where the applicant resides.~~ **may include:**

(1) criminal background checks, including a national criminal history check by the Federal Bureau of Investigation;

(2) credit histories; and

(3) other background checks considered necessary by the director.

SECTION 56. IC 28-8-4-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 24. An application must contain the following:

(1) The name of the applicant.

(2) The applicant's principal address.

(3) A fictitious or trade name, if any, used by the applicant in the conduct of its business.

(4) The location of the applicant's business records.

(5) The history of the applicant's material litigation and criminal convictions for the five (5) years before the date of the application.

(6) A description of:

(A) the activities conducted by the applicant;

(B) the applicant's history of operations; and

(C) the business activities in which the applicant seeks to be engaged in Indiana.

(7) A list identifying the applicant's proposed authorized delegates in Indiana.

(8) A sample authorized delegate contract, if applicable.

(9) A sample form of payment instrument, if applicable.

(10) The location or locations at which the applicant and its authorized delegates propose to conduct the licensed activities in Indiana. **If any business, other than the business of money transmission under this chapter, will be conducted by the applicant or another person at any location identified under this subdivision, the applicant shall indicate for each location at which another business will be conducted:**

(A) the nature of the other business;

(B) the name under which the other business operates;

(C) the address of the principal office of the other business;

(D) the name and address of the business's resident agent in Indiana; and

(E) any other information that the director may require.

(11) The name and address of the clearing bank or banks on

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which the applicant's payment instruments will be drawn or through which such payment instruments will be payable.

(12) Documents revealing that the applicant has a net worth of at least one hundred thousand dollars ($100,000), calculated in accordance with generally accepted accounting principles.

(13) In addition to the requirements of subdivision (12), an applicant that sells payment instruments at more than one (1) location or through authorized delegates must have an additional net worth of the lesser of:

(A) fifty thousand dollars ($50,000) for each location in Indiana;

(B) fifty thousand dollars ($50,000) for each authorized delegate located in Indiana; or

(C) five hundred thousand dollars ($500,000).

SECTION 57. IC 28-8-4-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 35. (a) The director shall begin an investigation after an application is complete.

(b) The director shall investigate the:

(1) financial condition and responsibility;

(2) financial and business experience; and

(3) character and general fitness;

of an applicant.

(c) The director may conduct an onsite investigation of the applicant, the reasonable cost of which shall be borne by the applicant.

(d) The director shall issue a license to an applicant authorizing the applicant to engage in the licensed activities in Indiana for a term expiring December 31 of the year in which the license is issued if the director finds that:

(1) the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community; and

(2) the applicant has fulfilled the requirements imposed by this chapter.

(e) On application, the director shall determine whether a particular person qualifies as a controlling person. The director may waive any or all requirements of this chapter pertaining to a controlling person for good cause shown.

(f) If the director finds that:

(1) an applicant does not satisfy the requirements in subsection (d); **or**

(2) an application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license;

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the director may deny the application. The director must set forth the reasons for the denial in writing and send a copy of the reasons to the applicant.

SECTION 58. IC 28-8-4-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 38. (a) A licensee may renew a license by complying with the following:

(1) Filing with the director the annual report in the form that is prescribed by the director and sent by the director to each licensee not less than three (3) months immediately preceding the date established by the director for license renewal. The report must:

(A) include:

(i) a copy of the licensee's most recent audited consolidated annual financial statement, including a balance sheet, a statement of income or loss, a statement of changes in shareholder's equity, and a statement of changes in financial position; or

(ii) if the licensee is a wholly owned subsidiary, the consolidated audited annual financial statement of the parent corporation filed with the licensee's unaudited annual financial statement;

(B) the number of payment instruments sold by the licensee in Indiana, the dollar amount of those instruments, and the dollar amount of outstanding payment instruments sold by the licensee calculated from the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days before the renewal date;

(C) material changes to the information submitted by the licensee on its original application that have not been reported previously to the director on any other report required to be filed under this chapter;

(D) a list of the licensee's permissible investments; and

(E) a list of the locations within Indiana at which business regulated by this chapter will be conducted by either the licensee or its authorized delegate, **including information concerning any business, other than the business of money transmission under this chapter, that will be conducted at each identified location, as required under section 24(10) of this chapter.**

(2) Paying the annual renewal fee described under section 37 of this chapter.

(b) A licensee that:

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(1) does not file a renewal report or pay the renewal fee by the renewal filing deadline set by the director; and

(2) has not been granted an extension of time to do so by the director;

shall be notified by the director, in writing, that a hearing will be scheduled at which the licensee will be required to show cause why its license should not be suspended pending compliance with these requirements. If after the hearing the license is not suspended, the director may require a daily late fee beginning with the date the renewal report or annual renewal fee is required by this chapter in an amount fixed by the department under IC 28-11-3-5.

SECTION 59. IC 28-8-4-40.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 40.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:**

(1) Any business, other than the business of money transmission under this chapter, will be conducted by the licensee or another person at any location in Indiana in which the licensee conducts the business of money transmission under this chapter.

(2) Any information concerning other business conducted at the locations identified in the licensee's application under section 24(10) of this chapter changes.

(b) For each location described in subsection (a)(1) or (a)(2), the licensee shall provide to the department the information required under section 24(10) of this chapter with respect to that location:

(1) not later than fifteen (15) days after the other business begins operating at the location; or

(2) if the licensee's next application for a renewal license under section 38 of this chapter is due before the date described in subdivision (1), in the licensee's next application for a renewal license under section 38 of this chapter.

SECTION 60. IC 28-8-4-41 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 41. (a) The director may conduct an annual onsite examination of a licensee or an authorized delegate of a licensee.

(b) If the director determines that a reasonable belief exists that a person is operating without a valid license or in violation of this chapter, the director has the authority to investigate and examine the records of that person. The person examined must pay the reasonably incurred costs of the examination.

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(c) Except as provided in section 42(a)(2) of this chapter, the director must give the licensee forty-five (45) days written notice before conducting an onsite examination.

(d) If the director determines, based on the licensee's financial statements and past history of operations in Indiana, that an onsite examination is unnecessary, the director may waive the onsite examination.

(e) If the director concludes that an onsite examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of such examination **in accordance with the fee schedule adopted under IC 28-11-3-5.**

(f) An onsite examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. In lieu of an onsite examination, a director may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm. A report accepted under this subsection shall be considered, for all purposes, to be an official report of the director.

SECTION 61. IC 28-8-4-46 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 46. **(a)** The licensee or an authorized delegate shall comply with all state and federal money laundering statutes and regulations, **including the following:**

(1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).

(2) The USA Patriot Act of 2001 (P.L. 107-56).

(3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.

(4) Any other state or federal money laundering statutes or regulations that apply to a licensee or an authorized delegate.

(b) The department shall do the following:

(1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance with, state money laundering statutes or regulations.

(2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:

(A) enforce compliance with the federal statutes or regulations; or

(B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

SECTION 62. IC 28-8-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. (a) A person shall

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not engage in the business of cashing checks for consideration without first obtaining a license.

(b) Each application for a license shall be in writing in such form as the director may prescribe and shall include all of the following:

(1) The following information pertaining to the applicant:

(A) Name.

(B) Residence address.

(C) Business address.

(2) The following information pertaining to corporate directors of the applicant, officers of the applicant, owners of the applicant (if a proprietorship), and partners of the applicant, if applicable:

(A) Name.

(B) Residence address.

(C) Business address.

(3) The address where the applicant's office or offices will be located. **If any business, other than the business of cashing checks under this chapter, will be conducted by the applicant or another person at any of the locations identified under this subdivision, the applicant shall indicate for each location at which another business will be conducted:**

(A) the nature of the other business;

(B) the name under which the other business operates;

(C) the address of the principal office of the other business;

(D) the name and address of the business's resident agent in Indiana; and

(E) any other information that the director may require.

(4) Such other data, financial statements, and pertinent information as the director may require.

(c) The application shall be filed with a nonrefundable fee fixed by the department under IC 28-11-3-5.

SECTION 63. IC 28-8-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12. (a) The department shall determine the financial responsibility, business experience, character, and general fitness of the applicant before issuing the license.

(b) The department may refuse to issue a license if:

(1) an applicant who is an individual has been convicted of a felony; **or**

(2) the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(c) The director of the department may request evidence of compliance with this section by the licensee **at:**

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(1) the time of application;

(2) the time of renewal of the licensee's license; or

(3) any other time considered necessary by the director.

(d) For purposes of subsection (c), evidence of compliance ~~includes: but is not limited to, an official report of criminal activity from the state where the applicant resides.~~ **may include:**

(1) criminal background checks, including a national criminal history check by the Federal Bureau of Investigation;

(2) credit histories; and

(3) other background checks considered necessary by the director.

SECTION 64. IC 28-8-5-18.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 18.3. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:**

(1) Any business, other than the business of cashing checks under this chapter, will be conducted by the licensee or another person at any location in Indiana in which the licensee conducts the business of cashing checks under this chapter.

(2) Any information concerning other business conducted at the locations identified in the licensee's application under section 11(b)(3) of this chapter changes.

(b) For each location described in subsection (a)(1) or (a)(2), the licensee shall provide to the department the information required under section 11(b)(3) of this chapter with respect to that location:

(1) not later than fifteen (15) days after the other business begins operating at the location; or

(2) if the licensee's next application for a renewal license under section 15 of this chapter is due before the date described in subdivision (1), in the licensee's next application for a renewal license under section 15 of this chapter.

SECTION 65. IC 28-8-5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 19. (a) The department may examine the books, accounts, and records of a licensee and may make investigations to determine compliance.

(b) If the department examines the books, accounts, and records of a licensee, the licensee shall pay ~~an~~ **all reasonably incurred costs of the** examination **in accordance with the** fee ~~fixed~~ **schedule adopted** under IC 28-11-3-5. ~~There shall be no charge for the first day of examination.~~

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SECTION 66. IC 28-8-5-24.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 24.5. (a) A licensee shall comply with all state and federal money laundering statutes and regulations, including the following:**

(1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).

(2) The USA Patriot Act of 2001 (P.L. 107-56).

(3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.

(4) Any other state or federal money laundering statutes or regulations that apply to a licensee.

(b) The department shall do the following:

(1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance with, state money laundering statutes or regulations.

(2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:

(A) enforce compliance with the federal statutes or regulations; or

(B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

SECTION 67. IC 28-10-1-1, AS AMENDED BY P.L.141-2005, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect January 1, ~~2005.~~ **2006.**

SECTION 68. IC 28-11-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) The ultimate authority for and the powers, duties, management, and control of the department are vested in **the following** seven (7) members:

(1) The director of the department, who serves as an ex officio, voting member.

(2) The following six (6) members appointed by the governor ~~The members must be appointed~~ as follows:

~~(1)~~ **(A)** Two (2) members must have practical experience at the executive level of a state chartered bank.

~~(2)~~ **(B)** One (1) member must have practical experience at the executive level of a state chartered savings association or a state chartered savings bank.

~~(3)~~ **(C)** One (1) member must have practical experience at the

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executive level as a lender licensed under IC 24-4.5.

~~(4)~~ **(D)** One (1) member must have practical experience at the executive level of a state chartered credit union.

~~(5) Two (2) members~~ **(E) One (1) member** must be appointed with due regard ~~to a fair representation of~~ **for** the consumer, agricultural, industrial, and commercial interests of Indiana.

(b) Not more than ~~four (4)~~ **three (3)** members **appointed by the governor under subsection (a)(2) after June 30, 2006,** may be affiliated with the same political party.

SECTION 69. IC 28-11-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) A member **appointed by the governor under section 3(a)(2) of this chapter** serves a term of four (4) years but at the pleasure of the governor.

(b) The governor may reappoint a member **appointed under section 3(a)(2) of this chapter.**

SECTION 70. IC 28-11-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. **(a)** The governor shall designate one (1) of the members as chairman. **The governor may appoint the director as chairman under this section.**

(b) The chairman has one (1) vote on all matters voted on by the members.

SECTION 71. IC 28-11-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) Each member **who is not a state officer or employee** is entitled to receive an annual salary of four thousand dollars ($4,000).

(b) Each member is entitled to receive actual and necessary travel and other expenses incurred in the performance of the member's duties.

SECTION 72. IC 28-11-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) An employee of the department may be discharged at any time by the director for just cause.

(b) An employee discharged under subsection (a) may request the members to review the director's action. If an employee requests review under this subsection, the members shall review the discharge. **The director shall not participate in the members' review under this subsection.**

(c) If the members find that the discharge was not for just cause, the employee shall be reinstated and given other appropriate relief by the members.

SECTION 73. IC 28-11-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) As used in this section, "assets" means the assets of a financial institution as disclosed

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by ~~the~~ **a** report made by the financial institution ~~to the department~~ at the end of the year immediately preceding the fiscal year in which a fee is fixed under this section.

(b) The department shall fix and collect, on an annual basis, a schedule of fees for the services rendered and the duties performed by the department in the administration of financial institutions.

(c) The fees may not exceed the comparative cost to the department in the administration of financial institutions. In determining the costs, the department may classify the assets of financial institutions and fix fees at different rates for the examination, supervision, regulation, and liquidation of the classes of assets, based on the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions.

(d) The fees shall be charged and collected until changed or modified by the department. A change or modification of fees may not be adopted more often than one (1) time each state fiscal year. A modified schedule of fees is effective on the first day of the state fiscal year following the fiscal year in which the modification is adopted.

(e) Administrative charges included in the fee are in addition to charges collected under other statutes.

SECTION 74. IC 28-11-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) If the director determines that a director, an officer, or an employee of a financial institution has:

(1) committed a violation of a statute, a rule, a final cease and desist order, any condition imposed in writing by the director in connection with the grant of any application or other request by the financial institution, or any written agreement between the financial institution and the director;

(2) engaged or participated in an unsafe or unsound practice in connection with the financial institution;

(3) committed or engaged in an act, an omission, or a practice that constitutes a breach of fiduciary duty as director, officer, or employee; or

(4) been charged in a complaint, an indictment, or an information with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one (1) year under federal law or the law of a state;

the director, subject to subsection (b), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an

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order prohibiting any participation by the person in the conduct of the affairs of any financial institution, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach specified in subdivision (a) is subject to the authority of the director under subsection (a) if the director finds ~~both~~ **any** of the following:

(1) By reason of the violation, practice, or breach, ~~(A)~~ the financial institution has suffered or will probably suffer substantial financial loss or other damage. ~~or~~

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

~~(2)~~ **(3)** The violation, practice, or breach ~~(A)~~ involves personal dishonesty on the part of the officer, director, or employee ~~or~~ **involved.**

~~(B)~~ **(4) The violation, practice, or breach** demonstrates a willful or continuing disregard by the officer, director, or employee for the safety and soundness of the financial institution.

(c) A person convicted of a:

(1) felony; or

(2) crime involving dishonesty or breach of trust;

may not serve as a director, an officer, or an employee of a financial institution, or serve in any similar capacity, unless the person obtains the written consent of the department.

(d) A financial institution that willfully permits a person to serve the financial institution in violation of subsection (b) or (c) is subject to a civil penalty of five hundred dollars ($500) for each day the violation continues. A civil penalty paid under this subsection must be deposited into the financial institutions fund established by IC 28-11-2-9.

SECTION 75. IC 28-11-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) A notice issued under this chapter must:

(1) contain a statement of the facts constituting the alleged practice, violation, or breach;

(2) state the facts alleged in support of the violation, practice, or breach;

(3) state the director's intention to enter an order under section 3(a) of this chapter;

(4) be delivered to the board of directors of the financial institution;

(5) be delivered to the officer, director, or employee concerned; and

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(6) specify the procedures that must be followed to initiate a hearing to contest the facts alleged.

(b) If a hearing is requested within ten (10) days after service of the written notice, the director or designee of the director shall hold a hearing concerning the alleged practice, violation, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The director or designee of the director, based on the evidence presented at the hearing, shall enter:

(1) a final order under section 7 of this chapter for the immediate removal of the officer, director, or employee affected;

(2) a final order under section 7 of this chapter prohibiting further participation by the officer, director, or employee, in any manner, in the conduct of affairs of any financial institution;

(3) a final order under section 7 of this chapter requiring the financial institution and its directors, officers, employees, and agents to:

(A) cease and desist from the practice or violation; or

(B) take affirmative action to correct the conditions resulting from the practice or violation;

~~(3)~~ **(4)** a final order consisting of ~~both an order~~ **any combination of orders** described in ~~subdivision~~ **subdivisions** (1) ~~and an order described in subdivision (2);~~ **through (3);**

~~(4)~~ **(5)** a reprimand of the individuals, entities, or other persons concerned; or

~~(5)~~ **(6)** a dismissal of the entire matter.

(c) If no hearing is requested within the time specified in subsection (b), the director may proceed to issue a final order described in subsection (b)(1), (b)(2), ~~or~~ (b)(3), **or (b)(4)** on the basis of the facts set forth in the written notice.

(d) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any financial institution without the approval of the director.

(e) The director may, for the protection of the financial institution or the interests of its depositors, suspend from office or prohibit from participation in the affairs of the financial institution an officer, a director, or an employee of a financial institution who is the subject of a written notice served by the director under subsection (a). A suspension or prohibition under this subsection becomes effective upon service of the notice. Unless stayed by a court in a proceeding authorized by subsection (f), the notice shall remain in effect pending completion of the proceeding under the written notice served under

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subsection (a) and until the effective date of an order entered by the director under subsection (b) or (c). Copies of the notice shall also be served upon the financial institution or subsidiary of which the person is an officer, a director, or an employee.

(f) Not more than ten (10) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the financial institution or subsidiary under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings under subsection (b), and the court may stay the suspension of prohibition.

(g) The department shall maintain an official record of a proceeding under this chapter.

SECTION 76. IC 28-12-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) If the proposed corporation is organized to transact business under IC 28-1-11, the corporate name must include the word "bank", ~~or~~ "trust", **"banc", "banco", or "bancorp".**

(b) If the proposed corporation is to be a corporate fiduciary, the corporate name of the corporation must include the word "trust" or "fiduciary".

SECTION 77. IC 28-13-16-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. A financial institution **or any of its subsidiaries** may acquire or establish a nonqualifying subsidiary by submitting an application to the department containing:

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

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

SECTION 78. IC 28-14-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 7.5. Conservatorship of Corporate Fiduciaries

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Sec. 1. This chapter applies to a corporate fiduciary (as defined in IC 28-1-1-3(19)).

Sec. 2. Except as otherwise provided, the definitions in IC 28-14-1 apply throughout this chapter.

Sec. 3. (a) The department may appoint a conservator for a corporate fiduciary if the department determines that:

(1) one (1) or more grounds for the appointment of a receiver under IC 28-1-3.1-2(a) exist with respect to the corporate fiduciary; or

(2) the appointment of a conservator is necessary to conserve the assets of the corporate fiduciary for the benefit of:

(A) creditors of the corporate fiduciary;

(B) the beneficiaries of trusts and other fiduciary accounts administered by the corporate fiduciary; or

(C) other persons for whom the corporate fiduciary acts in a fiduciary capacity.

(b) A conservator appointed under this section shall give any bond or security that the department considers appropriate.

(c) The department may appoint any competent and disinterested person as a conservator under this section.

Sec. 4. (a) A conservator appointed by the department under this chapter shall reimburse the department for all amounts expended by the department in connection with the conservatorship. Amounts reimbursed to the department under this subsection shall be paid from the assets of the corporate fiduciary as administrative expenses. Upon approval of the department, the conservator shall pay all other administrative expenses of the conservatorship from the assets of the corporate fiduciary.

(b) Administrative expenses described in this section constitute a first charge against the assets of the corporate fiduciary. The conservator shall pay the administrative expenses in full before any:

(1) final distribution of the corporate fiduciary's assets; or

(2) payments to any person described in section 3(a)(2) of this chapter.

Sec. 5. (a) Under the direction of the department, a conservator appointed under this chapter shall:

(1) take possession of the books, records, and assets of the corporate fiduciary; and

(2) take any action necessary to conserve the assets of the corporate fiduciary pending:

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(A) a liquidation under IC 28-1-3.1; or

(B) other disposition of the corporate fiduciary's business as provided by law.

(b) A conservator appointed under this chapter:

(1) has all the rights, powers, and privileges of a receiver appointed under IC 28-1-3.1, except the power to liquidate a corporate fiduciary; and

(2) is subject to those obligations and liabilities to which a receiver is subject, to the extent the obligations and liabilities are consistent with this chapter.

(c) Throughout the time a conservator is in possession of a corporate fiduciary under this chapter, the rights of all parties with respect to the corporate fiduciary are the same as if a receiver had been appointed under IC 28-1-3.1.

Sec. 6. (a) While a corporate fiduciary is in conservatorship under this chapter, the department may require the conservator to set aside and make available for payment to any persons described in section 3(a)(2) of this chapter, on a pro rata basis, any amounts that, in the opinion of the department, may be safely and prudently used for such payments.

(b) Any assets received or acquired after a corporate fiduciary is placed in conservatorship under this chapter shall be:

(1) kept in cash;

(2) invested in direct obligations of the United States; or

(3) deposited in depository institutions designated by the department.

Sec. 7. With the prior approval of the department, a conservator appointed under this chapter may borrow money as necessary or expedient to aid in the operation or reorganization of the corporate fiduciary. Any loan obtained by the conservator under this section may be secured by the pledge or mortgage of, or through a lien upon or security interest in, any assets:

(1) belonging to the corporate fiduciary; and

(2) not held in trust for the benefit of another person.

Sec. 8. (a) The department may:

(1) terminate a conservatorship ordered under this chapter; and

(2) permit the corporate fiduciary subject to the conservatorship to resume the transaction of the corporate fiduciary's business, subject to any terms, conditions, restrictions, and limitations that the department may prescribe;

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if the department is satisfied that a termination of the conservatorship may be done safely and is in the public interest.

(b) Subject to subsection (c), the department may:

(1) terminate a conservatorship ordered under this chapter; and

(2) apply for the appointment of a receiver for the corporate fiduciary under IC 28-1-3.1;

if the department determines that the appointment of a receiver for the corporate fiduciary is in the public interest.

(c) If the department determines that the liquidation of a corporate fiduciary placed in conservatorship under this chapter is in the public interest, the department shall:

(1) terminate the conservatorship ordered under this chapter; and

(2) apply for the appointment of a receiver for the corporate fiduciary under IC 28-1-3.1.

Sec. 9. The department may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 79. IC 28-15-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a)** Savings associations may do the following:

(1) Accept deposit accounts.

(2) Issue evidence of deposit account ownership.

(3) Declare and distribute earnings to members.

(4) Pay, in part or in full, withdrawal requests of deposit accounts.

(5) Subject to the provisions and restrictions of 12 U.S.C. 84 and 12 CFR 32:

(A) Make loans to members on the security of deposit accounts.

(B) Make property improvement loans.

(C) Make other loans as provided under IC 28-15-8.

(D) Make mortgage loans.

(E) Accept additional collateral on mortgage loans.

(F) Purchase and sell loans.

(G) Negotiate loan servicing agreements.

(H) Purchase and sell participating interests in loans.

(I) Issue letters of credit with specific expiration dates.

(J) Make secured or unsecured loans, which are partially insured or guaranteed in any manner by any state of the United States, the United States government, or any of its agencies or government sponsored enterprises.

(K) Purchase commercial paper that is denominated in United

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States currency and rated by at least one (1) nationally recognized investment rating service in one (1) of the two (2) highest grades.

(L) Make, purchase, or participate in alternative mortgage loans as provided in IC 28-15-11.

(6) Acquire and sell real estate in satisfaction of debts previously contracted.

(7) Acquire real estate for the convenient transaction of its business. A savings association has the same powers under this subdivision as a bank or trust company has under IC 28-1-11-5.

(8) Notwithstanding any other law, establish, maintain, or relocate one (1) or more branch offices by following the provisions of IC 28-2-13, IC 28-2-17, or IC 28-2-18 as if the savings association were a bank.

(9) Become a member in any agency or instrumentality of the federal government. For the purposes of this subdivision, membership in an agency or instrumentality of the federal government may include:

(A) purchasing stock;

(B) purchasing notes and debentures; or

(C) borrowing money.

(10) Subject to any limitations imposed by the department through policy:

(A) invest the money deposited in the savings association in the shares of the capital stock, bonds, debentures, notes, or other obligations of a federal home loan bank of the United States;

(B) become a member of the federal home loan bank of the district in which Indiana is located or an adjoining district;

(C) borrow money from:

(i) a federal home loan bank described in clause (B);

(ii) the Federal Deposit Insurance Corporation; or

(iii) any other corporation;

(D) transfer, assign to, and pledge with a federal home loan bank described in clause (B), the Federal Deposit Insurance Corporation, or any other corporation any of the bonds, notes, contracts, mortgages, securities, or other property of the savings association held or acquired as security for the payment of loans entered into under clause (C); and

(E) exercise all rights, powers, and privileges conferred upon, and do all things and perform all acts required of, members or shareholders of a federal home loan bank by the Federal Home

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Loan Bank Act (12 U.S.C. 1421 through 1449).

(11) Subject to the provisions and restrictions of 12 U.S.C. 24 and 12 CFR 1, invest in the following types of securities:

(A) Bonds, notes, certificates, and other valid obligations of the United States government or any agency of the United States government.

(B) Accounts offered by federally insured banks, savings banks, and savings associations.

(C) Bonds, notes, or other evidences of indebtedness that are general obligations supported by the full faith and credit of any state in the United States or any city, town, or other political subdivision in any state in the United States if the obligations have been assigned one (1) of the four (4) highest grades by a nationally recognized investment rating service.

(D) Shares of stock of a subsidiary that does not exercise a power or engage in any activity that is not authorized for the savings association. The investment power granted by this subdivision is separate from the investment power granted by IC 28-15-9.

(E) Corporate debt securities that are denominated in United States currency and rated by at least one (1) nationally recognized investment rating service in one (1) of the four (4) highest grades. Corporate debt securities in which a savings association invests under this clause must be convertible into stock at the sole option of the holder, and a savings association is prohibited from exercising the conversion option.

(F) Shares of open end investment companies that are eligible for purchase by national banks.

(G) Bankers' acceptances that are eligible for purchase by national banks.

(12) For the purpose of:

(A) check and deposit sorting and posting;

(B) computation and posting of interest and other credits and charges;

(C) preparation and mailing of checks, statements, notices, and similar items; or

(D) other clerical, bookkeeping, accounting, statistical, or similar functions performed by a savings association;

invest in a corporation organized in any state to perform those functions for two (2) or more savings associations, each of which owns a portion of the capital stock of the corporation. The total investment of a savings association under this subdivision may

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not exceed ten percent (10%) of the capital and surplus of the savings association. A savings association may not invest in this type of corporation unless the corporation furnishes assurances to the department that it will subject itself to examination by the department to the same extent as if the services were performed by the savings association.

(13) Lend money to other savings associations:

(A) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(B) that are incorporated and operating under the laws of any state or of the United States.

(14) Borrow money and mortgage or pledge its property to secure payment.

(15) Issue subordinated notes or debentures.

(16) Assess and collect interest, fees, and other charges.

(17) Insure its deposit accounts with the Federal Deposit Insurance Corporation or its successor.

(18) Act as an agent for the United States or its instrumentalities.

(19) Accept property for safe keeping or escrow.

(20) Rent or lease safe deposit boxes.

(21) Issue and sell checks, drafts, money orders, and other instruments for the transmission or payment of money.

(22) Exercise all the powers that:

(A) are incidental and proper; or

(B) may be necessary and usual;

in carrying on the business of the savings association.

(23) Purchase or construct buildings, hold legal title to the buildings, and lease the buildings for public purposes to municipal corporations or other public authorities that have resources sufficient to make payment of all rentals as they become due. Each lease agreement entered into under this subdivision must provide that, upon expiration, the lessee will become the owner of the building.

(24) Open or establish automated teller machines at any location. An automated teller machine opened or established under this subdivision may be owned and operated individually or jointly on a cost sharing or fee basis.

(25) Act:

(A) in any fiduciary capacity in which a bank or trust company is permitted to act under this title; and

(B) as an agent for the sale of real estate, without bond or other security.

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(26) Accept and maintain demand deposit accounts if the savings association is insured by the Federal Deposit Insurance Corporation or its successor.

(27) Without the approval of the department, to the extent authorized by the board of directors of the savings association, establish or maintain agencies that:

(A) only service and originate, but do not approve, loans and contracts; or

(B) manage or sell real estate owned by the savings association.

An agency established or maintained under this subdivision may offer any services not referred to in this subdivision with the approval of the department, except for accepting payment on savings accounts. An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the savings association.

(b) Subject to any limitations or restrictions that the department may impose by rule or policy, a savings association may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the savings association's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the savings association's board of directors.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

SECTION 80. IC 35-43-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) A person who knowingly executes, or attempts to execute, a scheme or artifice:

(1) to defraud a state or federally chartered or federally insured financial institution; or

(2) to obtain any of the money, funds, credits, assets, securities, or other property owned by or under the custody or control of a state or federally chartered or federally insured financial institution by means of false or fraudulent pretenses, representations, or promises;

commits a Class C felony.

(b) As used in this section, the term "state or federally chartered or federally insured financial institution" means:

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(1) an institution with accounts insured by the Federal Deposit Insurance Corporation;

(2) a credit union with accounts insured by the National Credit Union Administration Board;

(3) a federal home loan bank or a member, as defined in Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), as in effect on December 31, 1990, of the Federal Home Loan Bank System; or

(4) a bank, banking association, land bank, intermediate credit bank, bank for cooperatives, production credit association, land bank association, mortgage association, trust company, savings bank, or other banking or financial institution organized or operating under the laws of the United States or of the state.

The term does not include a lender licensed under IC 24-4.5.

SECTION 81. IC 24-5-3 IS REPEALED [EFFECTIVE JULY 1, 2006].

C o p y

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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