February 16, 2007

HOUSE BILL No. 1555

DIGEST OF HB 1555 (Updated February 14, 2007 3:50 pm - DI 101)

Citations Affected: IC 4-4; IC 5-1.5; IC 5-20; IC 6-8; IC 8-14.5; IC 8-21; IC 8-22; IC 23-2; IC 23-6; IC 23-19; IC 24-5; IC 27-1; IC 27-4; IC 28-2; IC 35-45; IC 35-46; IC 36-7; IC 36-7.5; IC 36-9; noncode.

Synopsis: Uniform securities law. Adopts the Uniform Securities Act. Establishes: (1) registration and filing requirements for securities offerings; and (2) registration requirements for securities professionals. Establishes and restricts penalties, liability, and disciplinary actions for violations of registration, filing, and other requirements concerning securities and securities professionals. Makes: (1) fraudulent practices involving securities unlawful; and (2) conforming changes. Repeals the current securities regulation statute.

Effective: July 1, 2008.

Bardon, Burton, Ruppel

January 23, 2007, read first time and referred to Committee on Financial Institutions.
February 15, 2007, amended, reported — Do Pass.

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February 16, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1555

A BILL FOR AN ACT to amend the Indiana Code concerning commercial Law.

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

SECTION 1. IC 4-4-11-41 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 41. Any bonds issued by the authority pursuant to this chapter, any guarantees by the authority pursuant to the guaranty program, and any other securities issued in connection with a financing under this chapter shall be exempt from the registration and other requirements of ~~IC 23-2-1~~ **IC 23-19** and any other securities registration laws.

SECTION 2. IC 4-4-11.2-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 30. Any bonds issued by the authority under this chapter are exempt from the registration and other requirements of ~~IC 23-2-1~~ **IC 23-19** and any other securities registration laws.

SECTION 3. IC 4-4-11.4-30, AS ADDED BY P.L.232-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 30. Any bonds issued by the authority under this chapter are exempt from the registration and other requirements of ~~IC 23-2-1~~ **IC 23-19** and any other securities registration laws.

SECTION 4. IC 5-1.5-9-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. All securities issued under this article are exempt from the registration requirements of ~~IC 23-2-1~~ **IC 23-19** and other securities registration statutes.

SECTION 5. IC 5-20-2-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. ~~Securities Exemption.~~ All bonds and interim receipts or certificates authorized pursuant to this chapter are exempt from the provisions of ~~IC 23-2-1~~ **IC 23-19** or other securities registration laws.

SECTION 6. IC 6-8-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. The following may be an account administrator under this chapter:

(1) A federal or state chartered:
(A) bank;
(B) savings association;
(C) savings bank; or
(D) credit union.

(2) A trust company authorized to act as a fiduciary.

(3) An insurance company or a health maintenance organization authorized to do business in Indiana under IC 27.

(4) A broker-dealer, an agent, or an investment advisor registered under ~~IC 23-2-1.~~ **IC 23-19.**

(5) A person that is licensed as an administrator under IC 27-1-25.

(6) An employee welfare benefit plan that is governed by the federal Employee Retirement Income Security Act, 29 U.S.C. 1001 et seq.

(7) An employer that participates in the medical care savings account program.

SECTION 7. IC 8-14.5-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. Bonds or notes issued under this chapter are exempt from the registration requirements of ~~IC 23-2-1~~ **IC 23-19** and any other state securities registration statutes.

SECTION 8. IC 8-21-12-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 15. (a) The authority may:

(1) finance improvements related to an airport or aviation related property or facilities, including the acquisition of real estate;

(2) refund any bonds; or

(3) pay any loan contract;

by borrowing money and issuing revenue bonds from time to time under this section.

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(b) The issuance of revenue bonds must be authorized by a resolution of the authority.

(c) The bonds or the trust agreement securing the bonds must indicate:

(1) the maturity date or dates;

(2) the interest rate or rates (whether fixed, variable, or a combination of fixed or variable) or the manner in which the interest rate or rates will be determined if a variable or an adjustable rate is used;

(3) the registration privileges and the place of payment;

(4) the conditions and terms under which the bonds may be redeemed or prepaid before maturity; and

(5) the source of payment.

(d) The bonds must be executed in the name of the authority by the chairman or vice chairman of the authority and attested by the secretary-treasurer, and interest coupons may be executed by placing on the interest coupons the facsimile signature of the chairman or vice chairman of the authority. The bonds are valid and binding obligations of the authority for all purposes, notwithstanding that before delivery of the bonds any of the persons whose signatures appear on the bonds have ceased to be officers of the authority, as if the persons had continued to be officers of the authority until after delivery. The validity of the authorization and issuance of the bonds is not dependent on or affected in any way by proceedings taken for the improvement for which the bonds are to be issued, or by contracts made in connection with the improvement. A resolution authorizing revenue bonds must provide that a revenue bond contain a recital that the bond is issued under this chapter, and a bond containing the recital under authority of a resolution is considered valid and issued in conformity with this chapter.

(e) At the discretion of the authority, the revenue bonds shall be sold either under the procedures for selling public bonds or at a negotiated sale with such terms as are consistent with the provisions of the resolution authorizing the sale. The resolution may delegate to the chairman or the secretary-treasurer the authority to conduct the sale. The bonds may be sold in installments at different times, or an entire issue or series may be sold or exchanged at one (1) time. Any issue or series of the bond may be sold in part or sold in part in installments at different times or at one (1) time.

(f) The bonds are special obligations of the authority and are payable solely from and secured by a lien upon the revenues of all or part of the facilities of the authority, as shall be more fully described in

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the resolution of the authority or trust agreement authorizing the issuance of the bonds, and, subject to the constitution and to the prior or superior rights of any person, the authority may by resolution pledge and assign for the security of the bonds all or part of the gross or net revenues of the authority and the authority's facilities.

(g) The bonds and interest on the bonds are not a debt of the authority, nor a charge, a lien, or an encumbrance, legal or equitable, upon property of the authority, or upon income, receipts, or revenues of the authority other than those revenues of the facilities that have been pledged to the payment of the bonds. Every bond must recite in substance that the bond, including interest, is payable solely from the revenues pledged to the bond's payment, and that the authority is under no obligation to pay the bond, except from those revenues.

(h) The bonds, when issued, have all the qualities of negotiable instruments, subject to provisions for registration, under IC 26 and are incontestable in the hands of a bona fide purchaser or owner of the bonds for value.

(i) The proceeds of the bonds are appropriated for the purpose for which the bonds may be issued and the proceeds shall be deposited and disbursed in accordance with any provisions and restrictions that the authority may provide in the resolution or trust agreement authorizing the issuance of the bonds.

(j) All bonds issued under this article are issued by a body corporate and politic of this state, but not a state agency, and for an essential public and governmental purpose. The bonds, the interest on the bonds, the proceeds received by an owner from the sale of the bonds to the extent of the owner's cost of acquisition, the proceeds received upon redemption before maturity, the proceeds received at maturity, and the receipt of the interest and proceeds are exempt from taxation as provided in IC 6-8-5.

(k) Notwithstanding any other law, all financial institutions, investment companies, insurance companies, insurance associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, money, or other funds belonging to them or within their control in bonds issued under this chapter.

(l) Bonds issued under this chapter are exempt from the registration requirements of ~~IC 23-2-1~~ **IC 23-19** and any other state securities registration statutes.

(m) The authority may obtain from a department or agency of the state or of the United States, or from a nongovernmental insurer, available insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of the interest or principal, or

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any debt service reserve funds, on bonds issued by the authority, or on securities purchased or held by the authority.

(n) The authority may enter into agreements with an entity to provide credit enhancement or liquidity support for any bonds issued by the authority, or for any debt service reserves securing any bonds, with terms that are reasonable and proper, in the discretion of the authority, and not in violation of law.

(o) The authority may enter into agreements or contracts with any financial institution as may be necessary, desirable, or convenient in the opinion of the authority for rendering services in connection with:

(1) the care, custody, or safekeeping of securities or other investments held or owned by the authority;

(2) the payment or collection of amounts payable as to principal or interest; and

(3) the delivery to the authority of securities or other investments purchased or sold by it.

The authority may also, in connection with any of the services rendered by a financial institution as to custody and safekeeping of the authority's securities or investments, require security in the form of collateral bonds, surety agreements, or security agreements as, in the opinion of the authority, is necessary or desirable.

(p) In the discretion of the authority, any bonds issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Indiana. Such a trust agreement may also provide for a cotrustee, which may be any trust company or bank in Indiana or another state.

(q) The trust agreement or the resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the owners of bonds as may be reasonable and proper, in the discretion of the authority, and not in violation of law.

(r) Any trust agreement or resolution may contain other provisions that the authority considers reasonable and proper for the security of the owners of bonds.

(s) All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from money pledged or assigned to the payment of the principal of and interest on bonds or from any other funds available to the authority.

(t) Funds or money held by the authority under any trust agreement or resolution may be invested pending disbursement as provided in the trust agreement or the resolution. Such an investment is not restricted by or subject to the provisions of any other law.

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(u) Refunding or refunding and improvement revenue bonds may be issued in accordance with the provisions for the refinancing or refinancing and improving of any of the facilities for which revenue bonds or a loan contract have been issued or made under this section or section 16 of this chapter.

(v) This section constitutes full authority for the issuance of revenue bonds. No procedure, proceedings, publications, notices, consents, approvals, orders, acts, or things by the authority, by a board, an officer, a commission, a department, an agency, or an instrumentality of the state, or by an eligible entity is required to issue revenue bonds or to do any act or perform anything under this chapter, except as presented by this chapter. The powers conferred by this chapter are in addition to, and not in substitution for, and the limitations imposed by this section do not affect the powers conferred in another section of this chapter or by any other statute.

SECTION 9. IC 8-22-3.7-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21. (a) All:

(1) property owned by the development authority;

(2) revenues of the development authority; and

(3) bonds issued by the development authority, the interest on the bonds, the proceeds received by a holder from the sale of bonds to the extent of the holder's cost of acquisition, proceeds received upon redemption before maturity, proceeds received at maturity, and the receipt of interest in proceeds;

are exempt from taxation in Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

(b) All securities issued under this chapter are exempt from the registration requirements of ~~IC 23-2-1~~ **IC 23-19** and other securities registration statutes.

SECTION 10. IC 23-2-2.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. As used in this chapter:

(a) "Franchise" means a contract by which:

(1) a franchisee is granted the right to engage in the business of dispensing goods or services, under a marketing plan or system prescribed in substantial part by a franchisor;

(2) the operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(3) the person granted the right to engage in this business is

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required to pay a franchise fee.

"Franchise" includes a contract whereby the franchisee is granted the right to sell franchises on behalf of the franchisor. The term as defined in subdivisions (1), (2), and (3) does not include a contract where the franchisee, or any of its officers or directors at the time the contract is signed, has been in the type of business represented by the franchise or a similar business for at least two (2) years, and the parties to the contract anticipated, or should have anticipated, at the time the contract was entered into that the franchisee's gross sales derived from the franchised business during the first year of operations would not exceed twenty percent (20%) of the gross sales of all the franchisee's business operations.

(b) "Franchisee" means a person to whom a franchise is granted.

(c) "Franchisor" means a person who grants a franchise.

(d) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value.

(e) "State" includes a territory or possession of the United States, the District of Columbia, and Puerto Rico.

(f) "Fraud" and "deceit" includes any misrepresentation in any manner of a material fact, any promise or representation or prediction as to the future not made honestly or in good faith, or the failure or omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

(g) "Offer" or "offer to sell" does not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee.

(h) "Publish" means to issue or circulate by newspaper, mail, radio, or television, or otherwise disseminate to the public.

(i) "Franchise fee" means any fee that a franchisee is required to pay directly or indirectly for the right to conduct a business to sell, resell, or distribute goods, services, or franchises under a contract agreement, including, but not limited to, any such payment for goods or services. "Franchise fee" does not include:

(1) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring the credit card;

(2) amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of goods or services; or

(3) the purchase or agreement to purchase goods at a bona fide

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wholesale price.

(j) "Disclosure statement" means the document provided for in section 13 of this chapter and all amendments to such document.

(k) "Write" or "written" includes printed, lithographed, or produced by any other means of graphic communication.

(l) "Advertisement" means any published communication which offers any franchise for sale.

(m) "Affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with, the person to whom affiliation is attributed.

(n) "Commissioner" means the Indiana securities commissioner under ~~IC 23-2-1-15(a).~~ **IC 23-19-6-1(a).**

(o) "Service station franchisee" means a person who is granted by an oil company, refiner, jobber, or other franchisor a supply franchise agreement or a lease franchise agreement, or both, to sell gasoline at retail by a metered pump in Indiana.

(p) "Designated family member" means any person named in a franchise agreement by a service station franchisee as the person entitled to fulfill the terms of the agreement on behalf of the franchisee if the franchisee dies before the term of the franchise has ended. Only the following are eligible to be named as designated family members:

(1) The spouse of the franchisee.

(2) A natural or adopted child of the franchisee.

(3) A stepchild of the franchisee.

(4) The guardian of the franchisee's child or stepchild.

SECTION 11. IC 23-2-2.5-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 43. (a) All fees and funds of whatever character accruing from the administration of this chapter shall be:

(1) accounted for by the secretary of state;

(2) paid into the state treasury monthly; and

(3) placed in the same account of the state general fund as established by ~~IC 23-2-1-15(c),~~ **IC 23-19-6-1(f),** from which all compensation and expenses shall be paid for the administration of this chapter.

(b) The fee for filing a form for registration by notification of the sale of franchises under section 10.5 of this chapter is five hundred dollars ($500).

(c) The fee for filing a registration renewal form under section 18 of this chapter is two hundred fifty dollars ($250).

(d) When a registration notification form or registration renewal form is denied or withdrawn, the commissioner shall retain one

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hundred fifty dollars ($150) of the fee.

SECTION 12. IC 23-2-2.5-44 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 44. An appeal may be taken by any person from any final order of the commissioner affecting such person in the same manner as prescribed in ~~IC 1971, 23-2-1-20.~~ **IC 23-19-6-9.**

SECTION 13. IC 23-2-3.1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. As used in this chapter:

"Affiliate" means any person controlling, controlled by, or under the common control of another person.

"Beneficial owner of a security" means any person who, directly or indirectly, has the power to vote or direct the voting of all or part of the voting rights of the security, or has the power to dispose of or direct the disposition of the security.

"Commissioner" means the securities commissioner as defined in ~~IC 23-2-1-1.~~ **IC 23-19-1-2(4).**

"Control" means possession, direct or indirect, of the power to direct or to cause the direction of the management and policies of a person, through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless that power is the result of an official position or corporate office. The term includes "controlling", "controlled by", and "under common control with." Control is presumed to exist if any person is the beneficial owner of ten percent (10%) or more of any class of the voting securities of any other person. This presumption may be rebutted only by a showing that control does not exist in fact, at a hearing pursuant to section 9 of this chapter.

"Equity security" means:

(1) any share or similar security carrying, at the time of the takeover offer, the right to vote on any matter by virtue of the articles of incorporation, bylaws, or governing instrument of the target company or the right to vote for directors or persons performing substantially similar functions by operation of law;

(2) any security convertible into a security described in ~~clause~~ **subdivision** (1) or any warrant or right to purchase that security; or

(3) any other security which, for the protection of investors, is an equity security pursuant to a regulation of the commissioner.

"Offeror" means a person who makes or in any way participates in making a takeover offer. The term includes all affiliates of that person and all persons who act jointly or in concert with that person for the

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purpose of acquiring, holding, or disposing of, or exercising any voting rights attached to, the equity securities of a target company. It also includes the target company with respect to acquisitions of its own equity securities and with respect to periods of time when it is controlled by or under common control with the offeror. It does not include a financial institution or broker-dealer loaning funds or extending credit to any offeror in the ordinary course of its business, or any accountant, attorney, financial institution, broker-dealer, newspaper or magazine of general circulation, consultant, or other person furnishing information, services, or advice to or performing ministerial or administrative duties for an offeror and not otherwise participating in the takeover offer.

"Offeree" means a record or beneficial owner of equity securities of the class which an offeror acquires or offers to acquire in connection with a takeover offer.

"Person" means an individual, corporation, limited liability company, association, partnership, trust, or other entity.

"Substantially equivalent terms" means terms under which the fair market value of the consideration offered any offeree of a class of equity securities of the target company (determined on a per share or a per unit basis) are equal to the highest consideration offered in connection with a takeover offer to any other offeree of that class (determined on a per share or per unit basis).

"Takeover offer" means an offer to acquire or an acquisition of any equity security of a target company, pursuant to a tender offer or request or invitation for tenders, if, after the acquisition, the offeror is directly or indirectly a record or beneficial owner of more than ten percent (10%) of any class of the outstanding equity securities of the target company.

"Target company" means an issuer of securities which is organized under the laws of this state, has its principal place of business in this state, and has substantial assets in this state. Target company does not include:

(1) a financial institution subject to regulation by the department of financial institutions under IC 28, if the takeover offer is subject to approval by the department of financial institutions;

(2) a corporation subject to regulation by the utility regulatory commission under IC 8, if the takeover offer is subject to approval of the commission; or

(3) a public utility, public utility holding company, bank holding company, or savings association subject to regulation by a federal agency, if the takeover offer is subject to the approval by that

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federal agency.

SECTION 14. IC 23-2-3.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. Each statement required under section 5 or 5.5 of this chapter must be accompanied by:

(1) a consent of the offeror to service of process specified in ~~IC 23-2-1-16,~~ **IC 23-19-6-11;** and

(2) a filing fee of seven hundred fifty dollars ($750).

SECTION 15. IC 23-2-3.1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) This chapter shall be administered by the secretary of state of Indiana by and through the commissioner, who may exercise all powers granted to ~~him~~ **the commissioner** under ~~IC 23-2-1.~~ **IC 23-19.**

(b) Subject to the approval of the secretary of state, the commissioner may promulgate regulations necessary to carry out the purposes of this chapter under IC 4-22-2.

(c) Neither the secretary of state, nor the securities commissioner, nor any employee of the securities division, shall be liable in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this chapter.

SECTION 16. IC 23-2-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. As used in this chapter, the term:

"Application fee" means the fee charged an individual, in addition to the entrance fee or any other fee, to cover the provider's reasonable costs in processing the individual's application to become a resident.

"Commissioner" means the securities commissioner as provided in ~~IC 23-2-1-15(a).~~ **IC 23-19-6-1(a).**

"Continuing care agreement" means an agreement by a provider to furnish to at least one (1) individual, for the payment of an entrance fee and periodic charges, accommodations in a living unit of a home and:

(1) meals and related services;

(2) nursing care services;

(3) medical services;

(4) other health related services; or

(5) any combination of these services;

for the life of the individual or for more than one (1) month.

"Contracting party" means a person or persons who enter into a continuing care agreement with a provider.

"Entrance fee" means the sum of money or other property paid or transferred, or promised to be paid or transferred, to a provider in consideration for one (1) or more individuals becoming a resident of a

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home under a continuing care agreement.

"Home" means a facility where the provider undertakes, pursuant to a continuing care agreement, to provide continuing care to five (5) or more residents.

"Living unit" means a room, apartment, cottage, or other area within a home set aside for the use of one (1) or more identified residents.

"Long term financing" means financing for a period in excess of one (1) year.

"Omission of a material fact" means the failure to state a material fact required to be stated in any disclosure statement or registration in order to make the disclosure statement or registration, in light of the circumstances under which they were made, not misleading.

"Person" means an individual, a corporation, a partnership, an association, a limited liability company, or other legal entity.

"Provider" means a person that agrees to provide continuing care to an individual under a continuing care agreement.

"Refurbishment fee" means the fee charged an individual, in addition to the entrance fee or any other fee, to cover the provider's reasonable costs in refurbishing a previously occupied living unit specifically designated for occupancy by that individual.

"Resident" means an individual who is entitled to receive benefits under a continuing care agreement.

"Solicit" means any action of a provider in seeking to have an individual residing in Indiana pay an application fee and enter into a continuing care agreement, including:

(1) personal, telephone, or mail communication or any other communication directed to and received by any individual in Indiana; and

(2) advertising in any media distributed or communicated by any means to individuals residing in Indiana.

SECTION 17. IC 23-2-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. As used in this chapter, "commissioner" refers to the securities commissioner appointed under ~~IC 23-2-1-15(a).~~ **IC 23-19-6-1(a).**

SECTION 18. IC 23-2-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) The loan broker regulation account is created in the state general fund. The money in the loan broker regulation account may be used only for the regulation of loan brokers under this chapter. The loan broker regulation account shall be administered by the treasurer of state. The money in the loan broker regulation account does not revert to any other account within the state general fund at the end of a state fiscal year.

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(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the commissioner and shall be deposited with the treasurer of state who shall deposit them in the loan broker regulation account in the state general fund.

(c) All expenses incurred in the administration of this chapter shall be paid from appropriations made from the state general fund. However, costs of investigations and civil penalties recovered under this chapter shall be deposited in the securities division enforcement account created under ~~IC 23-2-1-15.~~ **IC 23-19-6-1(f).** The funds in the securities division enforcement account shall be available, with the approval of the ~~state~~ budget agency, to augment and supplement the funds appropriated for the administration of this chapter.

SECTION 19. IC 23-2-5-19, AS AMENDED BY P.L.181-2006, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

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

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

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

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

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

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

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

(7) The Indiana housing and community development authority.

(8) Any person authorized to:

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

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

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

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

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

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

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

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

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

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

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

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

SECTION 20. IC 23-2-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. As used in this chapter, "commissioner" refers to the securities commissioner appointed under ~~IC 23-2-1-15.~~ **IC 23-19-6-1(a).**

SECTION 21. IC 23-2-6-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. (a) The commissioner may make investigations in or outside Indiana that the commissioner finds necessary or appropriate to:

(1) determine whether any person has violated or is about to violate this chapter or any rule or order of the commissioner; or

(2) aid in the enforcement of this chapter.

(b) The commissioner may charge as costs of an investigation or examination all reasonable expenses, including a per diem prorated on the salary of the commissioner or an employee. All reasonable expenses of investigation, examination, or hearing shall be paid by the

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party under investigation or examination.

(c) The commissioner may publish information concerning any violation of this chapter or any rule or order of the commissioner. The commissioner shall upon request make available for inspection and copying under IC 5-14-3 information concerning any violation of this chapter or any rule or order of the commissioner.

(d) For purposes of an investigation or a proceeding under this chapter, the commissioner or an officer or employee designated by rule or order may do any of the following:

(1) Administer oaths and affirmations.

(2) Subpoena witnesses and compel the attendance of witnesses.

(3) Take evidence.

(4) Require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner finds to be relevant or material to the investigation or proceeding.

(e) If a person does not give testimony or produce the documents required by the commissioner or the commissioner's designee under an administrative subpoena, the commissioner or the designee may petition for a court order compelling compliance with the subpoena or the giving of the required testimony.

(f) A petition for an order of compliance under subsection (e) may be filed in any of the following:

(1) The circuit or superior court of a county containing a consolidated city.

(2) The circuit or superior court where service may be obtained on the person refusing to comply with the subpoena if the person is within Indiana.

(3) The appropriate court of the state having jurisdiction over the person refusing to comply with the subpoena if the person is outside Indiana.

(g) Costs of investigations, examinations, and hearings and civil penalties recovered under this chapter shall be deposited in the securities division enforcement account established under ~~IC 23-2-1-15.~~ **IC 23-19-6-1(f).** With the approval of the budget agency, the funds in the securities division enforcement account may be used to augment and supplement the funds appropriated for the administration of this chapter.

SECTION 22. IC 23-6-4-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21. (a) Any securities issued by a credit corporation are exempt from registration under, or compliance with, ~~IC 23-2-1.~~ **IC 23-19.**

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(b) Any tax exemptions, tax credits, or tax privileges granted to banks, savings and loan associations, trust companies, and other financial institutions by Indiana law are granted to a credit corporation.

(c) A credit corporation is exempt from regulation under, or compliance with, IC 28-1-1 through IC 28-1-23. However, the department of financial institutions shall conduct an annual examination of the credit corporation for the purpose of determining its financial condition.

SECTION 23. IC 23-19 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

ARTICLE 19. INDIANA UNIFORM SECURITIES ACT

Chapter 1. General Provisions

Sec. 1. This article may be cited as the Indiana Uniform Securities Act.

Sec. 2. In this article, unless the context otherwise requires:

(1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. However, a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this article.

(2) "Bank" means:

(A) a banking institution organized under the laws of the United States;

(B) a member bank of the Federal Reserve System;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency under Section 1 of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this article; and

(D) a receiver, conservator, or other liquidating agent of

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any institution or firm included in clause (A), (B), or (C).

(3) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) an agent;

(B) an issuer;

(C) a bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4) and 15 U.S.C. 78c(a)(5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4));

(D) an international banking institution; or

(E) a person excluded by rule adopted or order issued under this article.

(4) "Commissioner" means the securities commissioner appointed under IC 23-19-6-1(a).

(5) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company that is not an insured depository institution as defined in Section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) or any successor federal statute.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

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(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)) or rules or regulations adopted under that provision.

(8) "Filing" means the receipt under this article of a record by the commissioner or a designee of the commissioner.

(9) "Fraud", "fraudulent", "deceit", and "defraud" mean a misrepresentation of a material fact, a promise, representation, or prediction not made honestly or in good faith, or the failure to disclose a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. This definition does not limit or diminish the full meaning of the terms as applied by or defined in courts of law or equity. The terms are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal, dividends, and interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) a depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the Investment Company Act of 1940;

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars ($10,000,000) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this article, a depository institution, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars ($10,000,000) or its investment decisions are

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made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this article, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of ten million dollars ($10,000,000), its trustee is a depository institution, and its participants are exclusively plans of the types identified in clause (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars ($10,000,000);

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)) with total assets in excess of ten million dollars ($10,000,000);

(K) a private business development company, as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in excess of ten million dollars ($10,000,000);

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer", as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 CFR 230.144A);

(N) a "major U.S. institutional investor", as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 CFR 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of ten million dollars ($10,000,000) not organized for the specific purpose of evading this article; or

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(P) any other person specified by rule adopted or order issued under this article.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) a federal covered investment adviser;

(F) a bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution;

(G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment

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adviser; or

(H) any other person excluded by rule adopted or order issued under this article.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

(B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state, as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a), and is:

(i) an "investment adviser representative", as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); or

(ii) not a "supervised person", as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(25)); or

(D) is excluded by rule adopted or order issued under this article.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager under the trust or other agreement or instrument under which the security is issued.

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(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means IC 23-2-1 (before its repeal).

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus

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supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record", except in the phrases "of record", "official record", and "public record", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral

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rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or another specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E) includes as an "investment contract", among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an

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electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Sec. 3. "Securities Act of 1933" (15 U.S.C. 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. 1001 et seq.), "National Housing Act" (12 U.S.C. 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. 1 et seq.), "Internal Revenue Code" (26 U.S.C. 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. 78a et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on January 1, 2009.

Sec. 4. Nothing in this article shall be construed to relieve corporations from making reports required by law to be made to the secretary of state or any other state officer, or paying the fees to be paid by corporations. This article shall not be construed to repeal any law regulating the organization of corporations in this state, or the admission of any foreign corporation, but the provisions of this article shall be construed to be additional to any provisions regulating the organization of a corporation under the laws of this state, or the admission of a foreign corporation to do business in this state.

Sec. 5. Official comments adopted and published by the:

(1) secretary of state Indiana uniform securities act advisory committee; and

(2) National Conference of Commissioners on Uniform State Laws to the extent the comments are not inconsistent with the comments adopted by the committee under subdivision (1);

may be consulted by the courts to determine the underlying reasons, purposes, and policies of this article and may be used as a guide in this article's construction and application.

Chapter 2. Exemptions From Registration of Securities

Sec. 1. The following securities are exempt from the

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requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:

(1) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 CFR 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one (1) or more states; by a political subdivision of one (1) or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by Congress; or a certificate of deposit for any of the foregoing.

(2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.

(3) A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial part of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency under Section 1 of Public Law 87-722 (12 U.S.C. 92a); or

(C) any other depository institution, unless by rule or order the commissioner proceeds under section 4 of this chapter.

(4) A security issued by and representing an interest in or a debt of, or insured or guaranteed by, an insurance company authorized to do business in Indiana.

(5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

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(A) regulated in respect to its rates and charges by the United States or a state;

(B) regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or

(C) a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act.

(6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this article; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)).

(7) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative.

(8) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)).

(9) A security issued by a nonprofit corporation as defined by Section 501(c)(3) of the Internal Revenue Code that is

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designated by the governor as the secondary market for guaranteed student loans under IC 20-12-21.2.

Sec. 2. The following transactions are exempt from the requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:

(1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.

(2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this article, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this article or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

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(iv) an audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) any one (1) of the following requirements is met:

(i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System.

(ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.

(iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years.

(iv) The issuer of the security has total assets of at least two million dollars ($2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.

(3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System.

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its

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four (4) highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) a default has not occurred during the current fiscal year or within the three (3) previous fiscal years, or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article effecting an unsolicited order or offer to purchase.

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this article.

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others.

(9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner after a hearing.

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

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(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this article as a broker-dealer or as an agent.

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(13) A sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by rule adopted or order issued under this article.

(14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

(A) not more than twenty-five (25) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in subdivision (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this article or an agent registered under this article for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in subdivision (13), are purchasing for investment.

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165); and

(B) a stop order of which the offeror is aware has not been

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issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

(17) An offer to sell, but not a sale of, a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this article, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this article; and

(C) a stop order of which the offeror is aware has not been issued by the commissioner under this article and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

(19) A rescission offer, sale, or purchase under IC 23-19-5-10.

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this article.

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisers if those

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individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations.

(22) A transaction involving:

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162).

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this article, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subdivision or by rule adopted or order issued under this article; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subdivision or by rule adopted or order issued under this article, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subdivision, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with this article, the commissioner, by rule adopted or order issued under this article, may revoke the

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designation of a securities exchange under this subdivision, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

Sec. 3. A rule adopted or order issued under this article may exempt a security, transaction, or offer; a rule under this article may exempt a class of securities, transactions, or offers from any or all of the requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4; and an order under this article may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 1 and 2 of this chapter.

Sec. 4. (a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this article may deny, suspend application of, condition, limit, or revoke an exemption created under section 1(3)(C), (1)(7), 1(8), or 2 of this chapter or an exemption or waiver created under section 3 of this chapter with respect to a specific security, transaction, or offer. An order under this section may be issued only under the procedures in IC 23-19-3-6(d) or IC 23-19-6-4 and only prospectively.

(b) A person does not violate IC 23-19-3-1, IC 23-19-3-3 through IC 23-19-3-6, IC 23-19-5-4, or IC 23-19-5-10 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

Chapter 3. Registration of Securities and Notice Filing of Federal Covered Securities

Sec. 1. It is unlawful for a person to offer or sell a security in this state unless:

(1) the security is a federal covered security;

(2) the security, transaction, or offer is exempted from registration under IC 23-19-2-1 through IC 23-19-2-3; or

(3) the security is registered under this article.

Sec. 2. (a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. 77r(b)(2)), that is not otherwise exempt under IC 23-19-2-1 through IC 23-19-2-3, a rule adopted or order issued under this article may require the filing of any or all of the following records:

(1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of

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process complying with IC 23-19-6-11 signed by the issuer and the payment of a fee of:

(A) five hundred dollars ($500) for an issuer with net assets not exceeding ten million dollars ($10,000,000); or

(B) one thousand dollars ($1,000) for other issuers.

(2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission, under the Securities Act of 1933.

(3) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the Securities and Exchange Commission, and payment of a fee of five-hundredths of one percent (0.05%) of the excess of the dollar amount of securities sold during the fiscal year over the dollar amount of securities redeemed, not to exceed two thousand dollars ($2,000) in any one (1) year. The fee required in subdivision (1) shall be applied as a credit against the fee required under this subdivision.

(b) A notice filing under subsection (a) is effective for one (1) year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this article to be filed and by paying a renewal fee of two hundred fifty dollars ($250). A previously filed consent to service of process complying with IC 23-19-6-11 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)), a rule under this article may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with IC 23-19-6-11 signed by the issuer not later than fifteen (15) days after the first sale of the federal covered security in this state.

(d) Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), if the commissioner finds that there is a failure to comply with a notice

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or fee requirement of this section, the commissioner may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the commissioner.

Sec. 3. (a) A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in section 5 of this chapter and a consent to service of process complying with IC 23-19-6-11:

(1) A copy of the latest form of prospectus filed under the Securities Act of 1933.

(2) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this article.

(3) Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the commissioner.

(4) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) A stop order under subsection (d) or section 6 of this chapter or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under section 6 of this chapter.

(2) The registration statement has been on file for at least twenty (20) days or a shorter period provided by rule adopted or order issued under this article.

(d) The registrant shall promptly notify the commissioner in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall

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promptly file a record containing the price amendment. If the notice is not timely received, the commissioner may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The commissioner shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the commissioner, the registration statement is automatically effective under this article when all the conditions are satisfied or waived. If the registrant notifies the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the commissioner intends the institution of a proceeding under section 6 of this chapter. The notice by the commissioner does not preclude the institution of such a proceeding.

Sec. 4. (a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in section 5 of this chapter, a consent to service of process complying with IC 23-19-6-11, and, if required by rule adopted under this article, the following information or records:

(1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

(2) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the thirtieth

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day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected.

(3) With respect to persons covered by subdivision (2), the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer.

(4) With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (2) other than the person's occupation.

(5) With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in subdivision (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment.

(6) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering.

(7) The capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two (2) years or is obligated to issue its securities.

(8) The kind and amount of securities to be offered; the

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proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter.

(9) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in subdivision (2), (4), (5), (6), or (8) and by any person that holds or will hold ten percent (10%) or more in the aggregate of those options.

(11) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or

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to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two (2) years, and a copy of the contract.

(12) A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities.

(13) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with IC 23-19-2-2(17)(B).

(14) A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered.

(15) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer.

(16) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record that is public, which is used in connection with the registration statement.

(17) A balance sheet of the issuer as of a date within four (4) months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant.

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(18) Any additional information or records required by rule adopted or order issued under this article.

(c) A registration statement under this section becomes effective thirty (30) days, or any shorter period provided by rule adopted or order issued under this article, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under section 6 of this chapter;

(2) the commissioner has not issued an order under section 6 of this chapter delaying effectiveness; and

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) The commissioner may delay effectiveness once for not more than ninety (90) days if the commissioner determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The commissioner may also delay effectiveness for a further period of not more than thirty (30) days if the commissioner determines that the delay is necessary or appropriate.

(e) A rule adopted or order issued under this article may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment under such a sale; or

(4) delivery of the security under such a sale.

Sec. 5. (a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this article.

(b) A person filing a registration statement shall pay a filing fee of five-hundredths of one percent (0.05%) of the maximum aggregate offering price at which the registered securities are to be offered in Indiana, but the fee may not be less than two hundred

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fifty dollars ($250) and may not be more than one thousand dollars ($1,000). If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under section 6 of this chapter, the commissioner shall retain two hundred fifty dollars ($250) of the fee.

(c) A registration statement filed under section 3 or 4 of this chapter must specify:

(1) the amount of securities to be offered in this state;

(2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) A record filed under this article or the predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or section 4 of this chapter, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A rule adopted or order issued under this article may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this article, but the commissioner may not reject a depository institution solely because of its location in another state.

(g) A rule adopted or order issued under this article may require as a condition of registration that a security registered under this article be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this article or preserved for a period specified by the rule or order, which may not be longer than five

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(5) years.

(h) Except while a stop order is in effect under section 6 of this chapter, a registration statement is effective for one (1) year after its effective date, or for any longer period designated in an order under this article during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this article are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one (1) year after its effective date. A registration statement may be withdrawn only with the approval of the commissioner.

(i) While a registration statement is effective, a rule adopted or order issued under this article may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the commissioner so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay the greater of one hundred dollars ($100) or the difference between the amount originally paid and the amount the registration fee would have been if all the securities to be offered had been registered. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one (1) year after the date of the sale, the amendment is filed and the additional registration fee is paid.

Sec. 6. (a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the commissioner finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 5(j) of this chapter as of its

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effective date, or a report under section 5(i) of this chapter, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this article, a rule adopted or order issued under this article, or a condition imposed under this article has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; by a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court with jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this article applicable to the offering, but the commissioner may not institute a proceeding against an effective registration statement under this subdivision more than one (1) year after the date of the order or injunction on which it is based, and the commissioner may not issue an order under this subdivision on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under section 3 of this chapter, there has been a failure to comply with the undertaking required by section 3(b)(4) of this chapter;

(6) the applicant or registrant has not paid the filing fee, but the commissioner shall void the order if the deficiency is corrected; or

(7) the offering:

(A) will work or tend to work a fraud upon purchasers or would so operate; or

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or

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other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options.

(b) To the extent practicable, the commissioner by rule adopted or order issued under this article shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the commissioner when the registration statement became effective unless the proceeding is instituted within thirty (30) days after the registration statement became effective.

(d) The commissioner may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the commissioner shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) A stop order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) an opportunity for hearing; and

(3) findings of fact and conclusions of law in a record.

(f) The commissioner may modify or vacate a stop order issued under this section if the commissioner finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

Sec. 7. The commissioner may waive or modify, in whole or in part, any or all of the requirements of sections 2, 3, and 4(b) of this chapter or the requirement of any information or record in a registration statement or in a periodic report filed under section 5(i) of this chapter.

Chapter 4. Broker-Dealers, Agents, Investment Advisers,

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Investment Adviser Representatives, and Federal Covered Investment Advisers

Sec. 1. (a) It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this article as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) A broker-dealer without a place of business in this state if its only transactions effected in this state are with:

(A) the issuer of the securities involved in the transactions;

(B) a broker-dealer registered as a broker-dealer under this article or not required to be registered as a broker-dealer under this article;

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting for the account of others under discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this state, and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this state but who was not present in this state when the customer relationship was established, if:

(i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies

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the person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause;

(G) not more than three (3) customers in this state during the previous twelve (12) months, in addition to those customers specified in clauses (A) through (F) and under clause (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule adopted or order issued under this article.

(2) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

(c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the commissioner under this article, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this article may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) A rule adopted or order issued under this article may permit:

(1) a broker-dealer that is registered in Canada or another foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or another foreign jurisdiction who is temporarily present in this state and

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with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) an individual from Canada or another foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in subdivision (1).

Sec. 2. (a) It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this article as an agent or is exempt from registration as an agent under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)(2)).

(2) An individual who represents a broker-dealer that is exempt under section 1(b) or 1(d) of this chapter.

(3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by IC 23-19-2-2, other than IC 23-19-2-2(11) and IC 23-19-2-2(14).

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered

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security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(6) An individual who represents a broker-dealer registered in this state under section 1(a) of this chapter or exempt from registration under section 1(b) of this chapter in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting for the account of others under discretionary authority in a signed record.

(7) An individual who represents an issuer in connection with the purchase of the issuer's own securities.

(8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts.

(9) Any other individual exempted by rule adopted or order issued under this article.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this article or an issuer that is offering, selling, or purchasing its securities in this state.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) An individual may not act as an agent for more than one (1) broker-dealer or one (1) issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this article.

Sec. 3. (a) It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this article as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) A person without a place of business in this state that is

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registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this article, or broker-dealers registered under this article;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this article.

(2) A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under subdivision (1).

(3) Any other person exempted by rule adopted or order issued under this article.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this article, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the commissioner, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this article as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 4(a) of this chapter or is exempt from registration under section 4(b) of this chapter.

Sec. 4. (a) It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this article as an investment adviser

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representative or is exempt from registration as an investment adviser representative under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who is employed by or associated with an investment adviser that is exempt from registration under section 3(b) of this chapter or a federal covered investment adviser that is excluded from the notice filing requirements of section 5 of this chapter.

(2) Any other individual exempted by rule adopted or order issued under this article.

(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this article or a federal covered investment adviser that has made or is required to make a notice filing under section 5 of this chapter.

(d) An individual may transact business as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser unless a rule adopted or order issued under this article prohibits or limits an individual from acting as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this article, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the commissioner, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this article, a federal covered investment adviser that has filed a notice under section 5 of this chapter, or a broker-dealer registered under this article is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid

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to an investment adviser registered under this article, a federal covered investment adviser who has filed a notice under section 5 of this chapter, or a broker-dealer registered under this article with which the individual is employed or associated as an investment adviser representative.

Sec. 5. (a) Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) The following federal covered investment advisers are not required to comply with subsection (c):

(1) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this article, and broker-dealers registered under this article;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state; or

(D) other clients specified by rule adopted or order issued under this article.

(2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under subdivision (1).

(3) Any other person excluded by rule adopted or order issued under this article.

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with IC 23-19-6-11, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this article and pay the fees specified in section 10(e) of this chapter.

(d) The notice under subsection (c) becomes effective upon its filing.

Sec. 6. (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with IC 23-19-6-11, and paying the fee specified in section 10 of this

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chapter and any reasonable fees charged by the designee of the commissioner for processing the filing. The application must contain:

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the commissioner, any other financial or other information or record that the commissioner determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect and a proceeding is not pending under section 12 of this chapter, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this article may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 12 of this chapter, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this article, by paying the fee specified in section 10 of this chapter, and by paying costs charged by the designee of the commissioner for processing the filings.

(e) A rule adopted or order issued under this article may impose other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this article may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

Sec. 7. (a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration under section 1 or 3 of this chapter or a notice under section 5 of this chapter for the unexpired portion of the current registration or notice filing.

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(b) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this article. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this article shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this article.

Sec. 8. (a) If an agent registered under this article terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this article terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) If an agent registered under this article terminates employment by or association with a broker-dealer registered under this article and begins employment by or association with another broker-dealer registered under this article, or if an investment adviser representative registered under this article terminates employment by or association with an investment adviser registered under this article or a federal covered investment adviser that has filed a notice under section 5 of this

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chapter and begins employment by or association with another investment adviser registered under this article or a federal covered investment adviser that has filed a notice under section 5 of this chapter, then upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of section 6(a) of this chapter and payment of the filing fee required under section 10 of this chapter, the registration of the agent or investment adviser representative is:

(1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or

(2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

(c) The commissioner may withdraw a temporary registration if there are or were grounds for discipline as specified in section 12 of this chapter and the commissioner does so within thirty (30) days after the filing of the application. If the commissioner does not withdraw the temporary registration within the thirty (30) day period, registration becomes automatically effective on the thirty-first day after filing.

(d) The commissioner may prevent or suspend the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (b)(2) based on the public interest and the protection of investors. The commissioner, by order, may also extend a temporary registration to permit further time to review the qualifications of an applicant.

(e) If the commissioner determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this article may require the registration be canceled or

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terminated or the application denied. The commissioner may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

Sec. 9. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this article unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this article. The commissioner may institute a revocation or suspension proceeding under section 12 of this chapter within one (1) year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

Sec. 10. (a) A person shall pay a fee of two hundred fifty dollars ($250) when initially filing an application for registration as a broker-dealer and a fee of one hundred twenty-five dollars ($125) when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(b) The fee for an individual is twenty-five dollars ($25) when filing an application for registration as an agent, a fee of twenty-five dollars ($25) when filing a renewal of registration as an agent, and a fee of twenty-five dollars ($25) when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(c) A person shall pay a fee of one hundred dollars ($100) when filing an application for registration as an investment adviser and a fee of fifty dollars ($50) when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(d) The fee for an individual is twenty-five dollars ($25) when filing an application for registration as an investment adviser representative, a fee of twenty-five dollars ($25) when filing a renewal of registration as an investment adviser representative, and a fee of twenty-five dollars ($25) when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(e) A federal covered investment adviser required to file a notice

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under section 5 of this chapter shall pay an initial fee of fifty dollars ($50) and an annual notice fee of fifty dollars ($50).

(f) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this article.

(g) An investment adviser representative who is registered as an agent under section 2 of this chapter and who represents a person that is both registered as a broker-dealer under section 1 of this chapter and registered as an investment adviser under section 3 of this chapter or required as a federal covered investment adviser to make a notice filing under section 5 of this chapter is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

Sec. 11. (a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may establish minimum financial requirements for broker-dealers registered or required to be registered under this article and investment advisers registered or required to be registered under this article.

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a(b)), a broker-dealer registered or required to be registered under this article and an investment adviser registered or required to be registered under this article shall file such financial reports as are required by a rule adopted or order issued under this article. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a):

(1) a broker-dealer registered or required to be registered under this article and an investment adviser registered or required to be registered under this article shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this article;

(2) broker-dealer records required to be maintained under subdivision (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act

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of 1934 (15 U.S.C. 78q(a)) if they are readily accessible to the commissioner; and

(3) investment adviser records required to be maintained under subdivision (1) may be maintained in any form of data storage required by rule adopted or order issued under this article.

(d) The records of a broker-dealer registered or required to be registered under this article and of an investment adviser registered or required to be registered under this article are subject to such reasonable periodic, special, or other audits or inspections by a representative of the commissioner, within or outside this state, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed fifty thousand dollars ($50,000). The commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this article whose net capital exceeds, or of an investment adviser registered under this article whose minimum financial requirements exceed, the amounts required by rule or order under this article. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in IC 23-19-5-9(g).

(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), an agent may not have custody of funds or securities of a customer except under the supervision of a

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broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this article may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this article, a rule adopted or order issued under this article may require that information or other records be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this article may require an individual registered under section 2 or 4 of this chapter to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this article may require continuing education for an individual registered under section 4 of this chapter.

(i) The commissioner may annually select as many as twenty-five percent (25%) of all Indiana home and branch offices of registered broker-dealers for completion of compliance reports. Each broker-dealer office that is selected shall file its compliance report according to rules adopted by the commissioner under this article not more than ninety (90) days after being notified of selection under this subsection. No charges or other examination fees may be assessed against a registered broker-dealer as a result of the examination of a compliance report filed under this subsection unless the examination results in an investigation or examination made under IC 23-19-6-2(a).

Sec. 12. (a) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this article may deny an application, or may condition or limit registration, of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

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(b) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this article may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the commissioner may not:

(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the commissioner or a designee of the commissioner more than one (1) year after the date of the order on which it is based; or

(2) under subsection (d)(5)(A) and (d)(5)(B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) If the commissioner finds that the order is in the public interest and subsection (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), (d)(8), (d)(9), (d)(10), (d)(12), or (d)(13) authorizes the action, an order under this article may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars ($10,000) per violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) through (c) if the person:

(1) has filed an application for registration in this state under this article or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) knowingly violated or knowingly failed to comply with this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act within the previous ten (10) years;

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(3) has been convicted of a felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court with jurisdiction in an action instituted by the commissioner under this article or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing, by:

(A) the securities, depository institution, insurance, or other financial services regulator of a state or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking registration as an insurance agent;

(F) a depository institution regulator suspending or barring the person from the depository institution business; or

(G) any state regulatory body or organization governing real estate brokers or sales persons denying, suspending, or revoking a person's registration or license in the real estate industry;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and

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Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the commissioner may not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the commissioner from conducting an audit or inspection under section 11(d) of this chapter or refuses access to a registrant's office to conduct an audit or inspection under section 11(d) of this chapter;

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act within the previous ten (10) years;

(10) has not paid the proper filing fee within thirty (30) days after having been notified by the commissioner of a deficiency, but the commissioner shall vacate an order under this subdivision when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) by a court with jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities

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as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years;

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this subdivision if the individual has successfully completed all examinations required by subsection (e). The commissioner may require an applicant for registration under section 2 or 4 of this chapter who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination; or

(15) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue.

(e) A rule adopted or order issued under this article may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this article may waive, in whole or in part, an examination as to an individual and a rule adopted under this article may waive, in whole or in part, an examination as to a class of individuals if the commissioner determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final

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determination of an administrative proceeding. Upon the issuance of an order, the commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order may not be issued under this section, except under subsection (f), without:

(1) appropriate notice to the applicant or registrant;

(2) opportunity for hearing; and

(3) findings of fact and conclusions of law in a record.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the commissioner under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The commissioner may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the commissioner unless an investigation or the proceeding is instituted within one (1) year after the commissioner actually acquires knowledge of the material facts.

(j) All fines and penalties collected under this section shall be deposited into the securities division enforcement account as established by IC 23-19-6-1(f).

Chapter 5. Fraud and Liabilities

Sec. 1. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) to employ a device, scheme, or artifice to defraud;

(2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another

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person.

Sec. 2. (a) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities, or that receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice:

(1) to employ a device, scheme, or artifice to defraud another person; or

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

(b) A rule adopted under this article may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(c) A rule adopted under this article may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

Sec. 3. (a) In a civil action or administrative proceeding under this article, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) In a criminal proceeding under this article, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

Sec. 4. (a) Except as otherwise provided in subsection (b), a rule adopted or order issued under this article may require the filing of a prospectus, a pamphlet, a circular, a form letter, an advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this article.

(b) This section does not apply to sales and advertising literature

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specified in subsection (a) that relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by IC 23-19-2-1, IC 23-19-2-2, or IC 23-19-2-3 except as required under IC 23-19-2-1(7).

Sec. 5. It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this article, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

Sec. 6. The filing of an application for registration, a registration statement, a notice filing under this article, the registration of a person, the notice filing by a person, or the registration of a security under this article does not constitute a finding by the commissioner that a record filed under this article is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the commissioner has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective purchaser, customer, or client a representation inconsistent with this section.

Sec. 7. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the commissioner or designee of the commissioner, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

Sec. 8. (a) A person who knowingly violates this article, or a rule adopted under this article, except section 4 of this chapter or the notice filing requirements of IC 23-19-3-2 or IC 23-19-4-5, commits a Class C felony.

(b) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the commissioner upon the

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commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this article. If the commissioner determines that an action based on the securities division's investigations is meritorious:

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

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

(3) a prosecuting attorney to whom facts concerning fraud are referred under subdivision (1) may refer the matter to the attorney general;

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

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

(B) prosecute the alleged offense; and

(5) if a matter has been referred to the attorney general under subdivision (3), the commissioner and the securities division shall assist the attorney general in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy attorney general appointed by the attorney general.

(c) This article does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

Sec. 9. (a) A person is liable to the purchaser if the person sells a security in violation of this article, including a violation of IC 23-19-4-12(d)(9) or IC 23-19-4-12(d)(13). It is a defense if the person selling the security sustains the burden of proof that either the person did not know, and in the exercise of reasonable care could not have known, of the violation or the purchaser knowingly participated in the violation. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the greater of

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eight percent (8%) per annum or the rate provided for in the security from the date of the purchase, costs, and reasonable attorney's fees determined by the court or arbitrator, upon the tender of the security, or for actual damages as provided in subdivision (3).

(2) The tender referred to in subdivision (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subdivision (3).

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of the purchase, costs, and reasonable attorneys' fees determined by the court or arbitrator.

(b) A person is liable to the seller if the person buys a security in violation of this article, including a violation of IC 23-19-4-12(d)(9) or IC 23-19-4-12(d)(13). It is a defense if the person purchasing the security sustains the burden of proof that either the person did not know, and in the exercise of reasonable care could not have known, of the conduct constituting the violation or the seller knowingly participated in the violation. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorney's fees determined by the court or arbitrator, upon the tender of the purchase price, or for actual damages as provided in subdivision (3).

(2) The tender referred to in subdivision (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subdivision (3).

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing

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liability, and interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of the sale of the security, costs, and reasonable attorney's fees determined by the court or arbitrator.

(c) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of this article is liable to the client. An action under this subsection shall be governed by the following:

(1) For a violation of section 1 or 2 of this chapter, the client may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of the fraudulent conduct, costs, and reasonable attorney's fees determined by the court less the amount of any income received as a result of the fraudulent conduct.

(2) For a violation of any other section of this article, the client may maintain an action to recover the consideration paid for the advice, interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of payment, costs, and reasonable attorney's fees determined by the court or arbitrator.

(3) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(d) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (a) through (c):

(1) A person that directly or indirectly controls a person liable under subsections (a) and (b), unless the controlling person sustains the burden of proof that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(2) An individual who is a managing partner, executive officer, or director of a person liable under subsections (a) through (c), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged

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to exist.

(3) An individual who is an employee of or associated with a person liable under subsections (a) through (c) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

(4) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (a) through (c), unless the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(e) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(f) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(g) Action under this section shall be commenced within three (3) years after discovery by the person bringing the action of a violation of this article, and not afterwards.

(h) A person that has made, or has engaged in the performance of, a contract in violation of this article or a rule adopted or order issued under this article, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this article, may not base an action on the contract.

(i) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this article or a rule adopted or order issued under this article is void.

(j) The rights and remedies provided by this article are in addition to any other rights or remedies that may exist.

Sec. 10. A purchaser, seller, or recipient of investment advice may not maintain an action under section 9 of this chapter if:

(1) the purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) an offer stating the respect in which liability under section 9 of this chapter may have arisen and fairly advising the purchaser, seller, or recipient of investment

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advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this article to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation described in section 9(a) of this chapter, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the rate of eight percent (8%) per annum from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the rate of eight percent (8%) per annum from the date of the purchase in cash equal to the damages computed in the manner provided in this clause;

(C) if the basis for relief under this section may have been a violation described in section 9(b) of this chapter, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest from the date of the sale, or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability, and interest at the rate of eight percent (8%) per annum from the date of the sale; or

(D) if the basis for relief under this section may have been a violation described in section 9(c) of this chapter, an offer to reimburse in cash the consideration paid for the advice and interest from the date of payment;

(2) the offer under subdivision (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty (30) days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three (3) days, that the

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commissioner, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under subdivision (1);

(4) the offer under subdivision (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under subdivision (1) in a record within the period specified under subdivision (2) is paid in accordance with the terms of the offer.

Chapter 6. Administration and Judicial Review

Sec. 1. (a) This article shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this article under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this article. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

(1) shall employ a chief deputy, attorneys, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this article; and

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

(c) It is unlawful for the commissioner or an officer, employee, or designee of the commissioner to use for personal benefit or the benefit of others records or other information obtained by or filed with the commissioner that are not public under section 7(b) of this chapter. This article does not authorize the commissioner or an officer, employee, or designee of the commissioner to disclose the record or information, except in accordance with section 2, 7(c), or 8 of this chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) The commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these

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initiatives, the commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The commissioner may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the commissioner to require participation or monetary contributions of a registrant in an investor education program.

(f) Fees and funds of whatever character accruing from the administration of this article shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of the state in either the state general fund or the enforcement account referenced below. Expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, grants and donations under subsection (e), costs of investigations, and civil penalties recovered under sections 3(b) and 4(d) of this chapter shall be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. The funds in the enforcement account shall be available, with the approval of the budget agency:

(1) to augment and supplement the funds appropriated for the administration of this article; and

(2) for grants and awards to nonprofit entities for programs and activities that will further investor education and financial literacy in the state.

The funds in the enforcement account do not revert to the state general fund at the end of any state fiscal year.

(g) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the

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commissioner and the commissioner's designee to represent the commissioner and the securities division in any proceeding involving enforcement or defense of this article.

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

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

(j) The provisions of this article delegating and granting power to the secretary of state, the securities division, and the commissioner shall be liberally construed to the end that:

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

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

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

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

(k) Copies of any statement and documents filed in the office of the secretary of state and of any records of the secretary of state certified by the commissioner shall be admissible in any prosecution, action, suit, or proceeding based upon, arising out of, or under this article to the same effect as the original of such statement, document, or record would be if actually produced.

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(l) IC 4-21.5 is not applicable to any of the proceedings under this article.

Sec. 2. (a) The commissioner may:

(1) conduct public or private investigations within or outside this state which the commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this article or a rule adopted or order issued under this article, or to aid in the enforcement of this article or in the adoption of rules and forms under this article;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this article or a rule adopted or order issued under this article if the commissioner determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this article, the commissioner or the commissioner's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation. Upon order of the commissioner or a hearing officer appointed by the commissioner in any hearing, depositions may be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner or a hearing officer appointed by the commissioner.

(c) If a person does not appear or refuses to testify, file a statement, or produce records, or otherwise does not obey a subpoena as required by this article, the commissioner or hearing officer appointed by the commissioner may apply to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the commissioner or hearing officer appointed by the commissioner;

(3) order the person to testify about the matter under

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investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) impose a civil penalty of not more than twenty thousand dollars ($20,000) for each violation; and

(7) grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) If a witness, in any hearing, inquiry, or investigation conducted under this article, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested. A grant of use immunity does not prohibit the use of evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(f) At the request of the securities regulator of another state or a foreign jurisdiction, the commissioner may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about

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to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The commissioner may provide the assistance by using the authority to investigate and the powers conferred by this section as the commissioner determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this article or other law of this state if occurring in this state. In deciding whether to provide the assistance, the commissioner may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the commissioner on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the commissioner to carry out the request for assistance.

(g) In any prosecution, action, suit, or proceeding based upon or arising out of or under the provisions of this article, a certificate duly signed by the commissioner showing compliance or noncompliance with the provisions of this article, respecting the security in question or respecting compliance or noncompliance of this article, by any issuer, broker-dealer, investment advisor, or agent, shall constitute prima facie evidence of compliance or noncompliance with the provisions of this article, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce this article.

(h) Each witness who shall appear before the commissioner or a hearing officer appointed by the commissioner by order shall receive for the witness's attendance the fees and mileage provided for witnesses in civil cases, which shall be audited and paid by the state in the same manner as other expenses of the securities division are audited and paid upon the presentation of proper vouchers sworn to by the witnesses and approved by the commissioner. However, no witnesses subpoenaed at the instance of parties other than the commissioner or a hearing officer appointed by the commissioner shall be entitled to any fee or compensation from the state.

Sec. 3. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article or that a person has, is, or is about to engage in an act, practice, or course of business that

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materially aids a violation of this article or a rule adopted or order issued under this article, the commissioner may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this article or a rule adopted or order issued under this article.

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;

(B) ordering a receiver or conservator appointed under clause (A) to take charge and control of a respondent's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) imposing a civil penalty up to ten thousand dollars ($10,000) per violation and an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this article.

(d) Penalties collected under this section shall be deposited in the securities division enforcement account established under section 1 of this chapter.

Sec. 4. (a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article, the

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commissioner may:

(1) investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the legal rate of interest, directed to a person who has violated this article or a rule or order under this article;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under IC 23-19-4-1(b)(1)(D) or IC 23-19-4-1(b)(1)(F) or an investment adviser under IC 23-19-4-3(b)(1)(C); or

(3) issue an order under IC 23-19-2-4.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within forty-five (45) days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered under subsection (b), the hearing must be held within fifteen (15) days of receipt. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may impose a civil penalty up to ten thousand dollars ($10,000) per violation. Penalties collected under this section shall be deposited in the securities division enforcement account established under section 1 of this chapter.

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(e) In a final order, the commissioner may charge the cost of an investigation or proceeding for a violation of this article or a rule adopted or order issued under this article.

(f) If a petition for judicial review of a final order is not filed in accordance with section 9 of this chapter, the commissioner may file a certified copy of the final order with the clerk of a court with jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the commissioner may petition a court with jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not greater than twenty thousand dollars ($20,000) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) The commissioner shall send a certified copy of every final order that suspends or revokes a person's registration under this article, or that orders a person who is not registered under this article to cease and desist from violating this article, to the insurance commissioner appointed under IC 27-1-1-2. The insurance commissioner shall act in accordance with IC 27-1-15.6-29.5.

Sec. 5. (a) The commissioner may:

(1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this article and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this article, but those definitions may not be inconsistent with this article; and

(3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this article, a rule or form may not be adopted or amended, or an order issued or amended, unless the commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors

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and is consistent with the purposes intended by this article.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1938 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), the commissioner may require that a financial statement filed under this article be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this article. A rule adopted or order issued under this article may establish:

(1) subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisors Act of 1940 (15 U.S.C. 80b-18a), the form and content of financial statements required under this article;

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) The commissioner may provide interpretative opinions or issue determinations that the commissioner will not institute a proceeding or an action under this article against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this article. The commissioner shall charge a fee of one hundred dollars ($100) for an interpretive opinion or determination.

(e) A penalty under this article may not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith and reasonably believed to be conforming to a rule, form, or order of the commissioner under this article.

(f) A hearing in an administrative proceeding under this article must be conducted in public unless the commissioner for good cause consistent with this article determines that the hearing will not be so conducted.

Sec. 6. (a) The commissioner shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this article or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this article or the predecessor act; and interpretative opinions or no-action determinations issued under

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this article.

(b) The commissioner shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) The commissioner shall furnish a copy of a record that is a public record, or a certification that the public record does not exist, to a person that so requests. A rule adopted under this article may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the commissioner of a record's nonexistence is prima facie evidence of a record or its nonexistence.

Sec. 7. (a) Except as otherwise provided in subsection (b), records obtained by the commissioner or filed under this article, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) The following records are not public records and are not available for public examination under subsection (a):

(1) A record obtained by the commissioner in connection with an audit or inspection under IC 23-19-4-11(d) or an investigation under section 2 of this chapter.

(2) A part of a record filed in connection with a registration statement under IC 23-19-3-1 and IC 23-19-3-3 through IC 23-19-3-5 or a record under IC 23-19-4-11(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law and approved by the commissioner.

(3) A record that is not required to be provided to the commissioner or filed under this article and is provided to the commissioner only on the condition that the record will not be subject to public examination or disclosure.

(4) A nonpublic record received from a person specified in section 8(a) of this chapter.

(5) Any Social Security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.

(6) A record obtained by the commissioner through a designee of the commissioner that a rule or order under this article determines has been:

(A) expunged from the commissioner's records by the designee; or

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(B) determined to be nonpublic or nondisclosable by that designee if the commissioner finds the determination to be in the public interest and for the protection of investors.

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 8(a) of this chapter, the commissioner may disclose a record obtained in connection with an audit or inspection under IC 23-19-4-11(d) or a record obtained in connection with an investigation under section 2 of this chapter.

Sec. 8. (a) The commissioner shall, in its discretion, cooperate, coordinate, consult, and, subject to section 7 of this chapter, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, or a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this article, the commissioner shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

(1) Maximizing effectiveness of regulation for the protection of investors.

(2) Maximizing uniformity in federal and state regulatory standards.

(3) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) establishing or employing one (1) or more designees as a central depository for registration and notice filings under this article and for records required or allowed to be maintained under this article;

(2) developing and maintaining uniform forms;

(3) conducting a joint examination or investigation;

(4) holding a joint administrative hearing;

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(5) instituting and prosecuting a joint civil or administrative proceeding;
(6) sharing and exchanging personnel;
(7) coordinating registrations under IC 23-19-3 and IC 23-19-4-1 through IC 23-19-4-4 and exemptions under IC 23-19-2-3;
(8) sharing and exchanging records, subject to section 7 of this chapter;
(9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
(10) formulating common systems and procedures;
(11) notifying the public of proposed rules, forms, statements of policy, and guidelines;
(12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, considered necessary or appropriate to promote or achieve uniformity; and
(13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

Sec. 9. (a) An appeal may be taken by:
(1) any issuer, investment adviser, or registered broker-dealer whose application for registration of an issue of securities may have been granted or denied, from any final order of the commissioner respecting that application or registration;
(2) any applicant for registration as a broker-dealer, investment adviser, or agent of any registered broker-dealer, investment advisor, or agent, from any final order of the commissioner affecting the application or registration as a broker-dealer, investment adviser, or agent;
(3) any person against whom a civil penalty has been imposed under section 3(b) or 4(d) of this chapter, from the final order of the commissioner imposing the civil penalty; or
(4) any person who is named a respondent, from any final order issued by the commissioner under section 2, 3, or 4 of this chapter;

to the circuit or superior court of Marion County or the county wherein the person taking the appeal resides or maintains a place of business.

(b) Within twenty (20) days after the entry of the order, the commissioner shall be served with:

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(1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

(2) a demand in writing for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to the order; and

(3) a bond in the penal sum of five hundred dollars ($500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that shall be adjudged against the appellant.

(c) After the commissioner has been served with the items specified in subsection (b), the commissioner shall within ten (10) days make, certify, and deliver to the appellant the transcript, and the appellant shall within five (5) days file the same and a copy of the notice of appeal with the clerk of the court, which notice of appeal shall stand as appellant's complaint, and the commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter, including the making and entering of any order or orders in connection therewith and the conditions, limitations, or restrictions to be contained. The commissioner is not barred from revoking or altering the order for any proper cause that may thereafter accrue or be discovered. If the order is affirmed, the appellant is not barred after thirty (30) days from filing a new application if the application is not otherwise barred or limited. The appeal shall not in any way suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the court. An appeal may be taken from the judgment of the court on any appeal on the same terms and conditions as an appeal is taken in civil actions.

Sec. 10. (a) IC 23-19-3-1, IC 23-19-3-2, IC 23-19-4-1(a), IC 23-19-4-2(a), IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-5-1, IC 23-19-5-6, IC 23-19-5-9, and IC 23-19-5-10 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in Indiana or the offer to purchase or the purchase

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is made and accepted in Indiana.

(b) IC 23-19-4-1(a), IC 23-19-4-2(a), IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-5-1, IC 23-19-5-6, IC 23-19-5-9, and IC 23-19-5-10 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in Indiana or the offer to sell or the sale is made and accepted in Indiana.

(c) For the purpose of this section, an offer to sell or to purchase a security is made in Indiana, whether or not either party is then present in Indiana, if the offer:

(1) originates from within Indiana;

(2) is directed by the offeror to a place in Indiana and received at the place to which it is directed; or

(3) is directed by the offeror to a resident of Indiana.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in Indiana, whether or not either party is then present in Indiana, if the acceptance:

(1) is communicated to the offeror in Indiana and the offeree reasonably believes the offeror to be present in Indiana and the acceptance is received at the place in Indiana to which it is directed or to another place in Indiana; and

(2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) An offer to sell or to purchase is not made in Indiana when a publisher circulates, or there is circulated on the publisher's behalf, in Indiana a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in Indiana, or that is published in Indiana but has had more than two-thirds (2/3) of its circulation outside Indiana during the previous twelve (12) months, or when a radio or television program or other electronic communication originating outside Indiana is received in Indiana. A radio or television program or other electronic communication is considered as having originated in Indiana if either the broadcast studio or the originating source of transmission is located in Indiana, unless:

(1) the program or communication is syndicated and distributed from outside Indiana for redistribution to the general public in Indiana;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside Indiana for redistribution to the general public in Indiana;

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(3) the program or communication is an electronic communication that originates outside Indiana and is captured for redistribution to the general public in Indiana by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in Indiana, but which is not intended for distribution to the general public in Indiana.

(f) IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-4-5(a), IC 23-19-5-2, IC 23-19-5-5, and IC 23-19-5-6 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

Sec. 11. (a) An irrevocable consent to service of process required by this article must be signed and filed in the form required by a rule or order under this article. A consent appointing the secretary of state as the person's agent for service of process in an action or proceeding against the person, or the person's successor or personal representative under this article or a rule adopted or order issued under this article after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this article or a rule adopted or order issued under this article and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the secretary of state as the person's agent for service of process in an action or proceeding against the person or the person's successor or personal representative.

(c) Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the secretary of state, but it is not effective unless:

(1) the plaintiff, which may be the commissioner, promptly sends notice of the service and a copy of the process, return receipt requested, to the respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address of the respondent, or takes other reasonable steps to give notice; and

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(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the commissioner in a proceeding before the commissioner, allows.

(d) Service under subsection (c) may be used in a proceeding before the commissioner or by the commissioner in a civil action in which the commissioner is the moving party.

(e) If process is served under subsection (c), the court, or the commissioner in a proceeding before the commissioner, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

SECTION 24. IC 24-5-8-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21. Nothing in this chapter shall be construed as relieving a person from complying with ~~IC 23-2-1,~~ IC 23-2-2.5, ~~and~~ IC 23-2-2.7, **and IC 23-19.**

SECTION 25. IC 27-1-12.7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. The issuance of a funding agreement:

(1) constitutes an activity necessary, convenient, or expedient to the business of a life insurance company under IC 27-1-7-2;

(2) is not insurance under IC 27-1-5-1;

(3) is not a security (as defined in ~~IC 23-2-1-1(k)),~~ **IC 23-19-1-2(28));** and

(4) does not constitute gross premium for taxation purposes under IC 27-1-18-2.

SECTION 26. IC 27-1-15.6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) For purposes of this section, "permanently revoke" means that:

(1) the producer's license shall never be reinstated; and

(2) the former licensee, after the license revocation, is not eligible to submit an application for a license to the department.

(b) The commissioner may levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for any of the following causes:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in a license application.

(2) Violating:

(A) an insurance law;

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(B) a regulation;
(C) a subpoena of an insurance commissioner; or
(D) an order of an insurance commissioner;
of Indiana or of another state.
(3) Obtaining or attempting to obtain a license through misrepresentation or fraud.
(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.
(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
(6) Having been convicted of a felony.
(7) Admitting to having committed or being found to have committed any unfair trade practice or fraud in the business of insurance.
(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
(9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.
(10) Forging another's name to an application for insurance or to any document related to an insurance transaction.
(11) Improperly using notes or any other reference material to complete an examination for an insurance license.
(12) Knowingly accepting insurance business from an individual who is not licensed.
(13) Failing to comply with an administrative or court order imposing a child support obligation.
(14) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax.
(15) Failing to satisfy the continuing education requirements established by IC 27-1-15.7.
(16) Violating section 31 of this chapter.
(17) Failing to timely inform the commissioner of a change in legal name or address, in violation of section 7(h) of this chapter.
(c) The commissioner shall refuse to:
(1) issue a license; or
(2) renew a license issued;
under this chapter to any person who is the subject of an order issued by a court under IC 31-14-12-7 or IC 31-16-12-10 (or

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IC 31-1-11.5-13(m) or IC 31-6-6.1-16(m) before their repeal).

(d) If the commissioner refuses to renew a license or denies an application for a license, the commissioner shall notify the applicant or licensee and advise the applicant or licensee, in a writing sent through regular first class mail, of the reason for the denial of the applicant's application or the nonrenewal of the licensee's license. The applicant or licensee may, not more than sixty-three (63) days after notice of denial of the applicant's application or nonrenewal of the licensee's license is mailed, make written demand to the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held not more than thirty (30) days after the applicant or licensee makes the written demand, and shall be conducted under IC 4-21.5.

(e) The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that a violation of an individual licensee acting on behalf of the partnership or corporation was known or should have been known by one **(1)** or more of the partners, officers, or managers of the partnership or corporation and:

(1) the violation was not reported to the commissioner; and

(2) no corrective action was taken.

(f) In addition to or in lieu of any applicable denial, suspension, or revocation of a license under subsection (b), a person may, after a hearing, be subject to the imposition by the commissioner under subsection (b) of a civil penalty of not less than fifty dollars ($50) and not more than ten thousand dollars ($10,000). A penalty imposed under this subsection may be enforced in the same manner as a civil judgement.

(g) A licensed insurance producer or limited lines producer shall, not more than ten (10) days after the producer receives a request in a registered or certified letter from the commissioner, furnish the commissioner with a full and complete report listing each insurer with which the licensee has held an appointment during the year preceding the request.

(h) If a licensee fails to provide the report requested under subsection (g) not more than ten (10) days after the licensee receives the request, the commissioner may, in the commissioner's sole discretion, without a hearing, and in addition to any other sanctions allowed by law, suspend any insurance license held by the licensee pending receipt of the appointment report.

(i) The commissioner shall promptly notify all appointing insurers and the licensee regarding any suspension, revocation, or termination of a license by the commissioner under this section.

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(j) The commissioner may not grant, renew, continue, or permit to continue any license if the commissioner finds that the license is being used or will be used by the applicant or licensee for the purpose of writing controlled business. As used in this subsection, "controlled business" means:

(1) insurance written on the interests of:

(A) the applicant or licensee;

(B) the applicant's or licensee's immediate family; or

(C) the applicant's or licensee's employer; or

(2) insurance covering:

(A) the applicant or licensee;

(B) members of the applicant's or licensee's immediate family; or

(C) either:

(i) a corporation, limited liability company, association, or partnership; or

(ii) the officers, directors, substantial stockholders, partners, members, managers, employees of such a corporation, limited liability company, association, or partnership;

of which the applicant or licensee or a member of the applicant's or licensee's immediate family is an officer, director, substantial stockholder, partner, member, manager, associate, or employee.

However, this section does not apply to insurance written or interests insured in connection with or arising out of credit transactions. A license is considered to have been used or intended to be used for the purpose of writing controlled business if the commissioner finds that during any twelve (12) month period the aggregate commissions earned from the controlled business exceeded twenty-five percent (25%) of the aggregate commission earned on all business written by the applicant or licensee during the same period.

(k) The commissioner has the authority to:

(1) enforce the provisions of; and

(2) impose any penalty or remedy authorized by;

this chapter or any other provision of this title against any person who is under investigation for or charged with a violation of this chapter or any other provision of this title, even if the person's license or registration has been surrendered or has lapsed by operation of law.

(l) For purposes of this section, the violation of any provision of IC 28 concerning the sale of a life insurance policy or an annuity contract shall be considered a violation described in subsection (b)(2).

(m) The commissioner may order a licensee to make restitution if

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the commissioner finds that the licensee has committed a violation described in:

(1) subsection (b)(4);
(2) subsection (b)(7);
(3) subsection (b)(8); or
(4) subsection (b)(16).

(n) The commissioner shall notify the securities commissioner appointed under ~~IC 23-2-1-15~~ **IC 23-19-6-1(a)** when an administrative action or civil proceeding is filed under this section and when an order is issued under this section denying, suspending, or revoking a license.

SECTION 27. IC 27-1-15.6-29.5, AS ADDED BY P.L.48-2006, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 29.5. If the commissioner receives a copy of a final order from the securities commissioner under ~~IC 23-2-1-17.1(c),~~ **IC 23-19-6-4(h),** the commissioner shall:

(1) determine whether the person who is the subject of the final order is licensed by the department under this chapter; and
(2) if the person is licensed under this chapter, institute proceedings to determine whether the person's license should be suspended or revoked.

The determination under subdivision (2) may be based solely on the final order by the securities commissioner.

SECTION 28. IC 27-4-9-1, AS ADDED BY P.L.138-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. As used in this chapter, "securities commissioner" refers to the commissioner appointed by the secretary of state under ~~IC 23-2-1-15.~~ **IC 23-19-6-1(a).**

SECTION 29. IC 28-2-14-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. (a) At the time of the filing of an application with the department under section 12 of this chapter, the applicant may submit a written request asking the department to hold a hearing upon the fairness of the terms, conditions, and provisions of the proposed issuance and exchange of stock of the applicant for the stock of the bank or bank holding company proposed to be acquired. If a request is submitted under this subsection, the department may hold a public hearing upon the fairness of the exchange or upon any other matter with respect to the proposed acquisition. The shareholders of a bank or bank holding company proposed to be acquired and the shareholders of the applicant may appear and offer evidence at any public hearing at which the fairness of the exchange is to be determined. At least ten (10) days before the hearing, a person desiring to appear and offer testimony must give the

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department written notice of the person's intent to testify. The department may require the applicant to produce any additional information the department considers necessary for the hearing.

(b) Any public hearing held under this section must commence not less than thirty (30) days and not more than one hundred twenty (120) days after the date on which the department accepts the application for processing under section 12 of this chapter. The hearing shall be held at a place, date, and time specified by the department. The department may combine any hearing held under this section with a hearing held under section 12 of this chapter. The department may assign the task of conducting the hearing to a member or employee of the department. If the department decides to hold a public hearing under this section, it shall notify the applicant no later than thirty (30) days after the department's acceptance of an application for processing and at least twenty (20) days before the hearing. The applicant shall provide a written notice of the date, time, place, and purpose of the hearing to each bank that has an office in a county in which the bank proposed to be acquired, or a bank subsidiary of the bank holding company proposed to be acquired, has a principal office or branch. The bank or bank holding company proposed to be acquired shall transmit the written notice to its shareholders. The notice must also be published at least twenty (20) days before the date of the hearing in a newspaper of general circulation in each county in which is located the principal office or a branch of the bank proposed to be acquired or the principal office or a branch of a bank subsidiary of the bank holding company proposed to be acquired. The notice must contain any other provision as the department may require. The applicant shall pay all expenses of providing the notice, publication, court reporter fees, department expenses, appropriate department per diem expense, and hearing room fees, as determined by the department.

(c) The issuance of securities described in subsection (d) is a transaction exempted from the registration requirements of ~~IC 23-2-1-3~~ **IC 23-19-3-1** if, at the time the applicant submits a written request to the department under subsection (a), the applicant also submits to the securities commissioner appointed under ~~IC 23-2-1-15(a)~~ **IC 23-19-6-1(a)** a notice in writing of all terms of the transaction and if the securities commissioner does not disallow the exemption within the next five (5) full business days.

(d) Subsection (c) applies to any security issued in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in that exchange and partly for cash, under terms and conditions approved by the department after a hearing held under this

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section.

SECTION 30. IC 28-2-16-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) At the time of the filing of an application with the department, the applicant may submit a written request asking the department to hold a hearing upon the fairness of the terms, conditions, and provisions of the proposed issuance and exchange of stock of the applicant for the stock of the Indiana bank or Indiana bank holding company. If a request is submitted under this subsection, the department may hold a public hearing upon the fairness of the exchange or upon any other matter with respect to the proposed acquisition. The shareholders of a bank or bank holding company proposed to be acquired and the shareholders of the applicant may appear and offer evidence at any public hearing at which the fairness of the exchange is to be determined. At least ten (10) days before the hearing, a person desiring to appear and offer testimony must give the department written notice of the person's intent to testify. The department may require the applicant to produce such evidence as the department considers necessary to the hearing.

(b) Any public hearing held under this section must commence not less than thirty (30) days and not more than sixty (60) days after the date on which the department accepts the application for processing under section 17 of this chapter. If the department decides to hold a public hearing under this section, it shall notify the applicant no later than thirty (30) days after the department's acceptance of an application for processing and at least twenty (20) days before the hearing. The public hearing shall be held at a place, date, and time specified by the department. The department may combine any hearing held under this section with a hearing held under section 17 of this chapter. The department may assign the task of conducting the hearing to a member or employee of the department. If the department decides to hold a public hearing under this section, the applicant shall provide written notice of the date, time, place, and purpose of the hearing to each Indiana bank and each Indiana subsidiary of a bank holding company that has an office in a county in which the Indiana bank proposed to be acquired or an Indiana bank subsidiary of the Indiana bank holding company proposed to be acquired has a principal office or branch. The Indiana bank or Indiana bank holding company proposed to be acquired shall transmit the written notice to its shareholders. The notice must also be published at least twenty (20) days before the date of the hearing in a newspaper of general circulation in each county in which is located the principal office or a branch of the bank proposed to be acquired or the principal office or a branch of a bank subsidiary of the

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bank holding company proposed to be acquired. The notice must contain any other provision as the department may require. The applicant shall pay all expenses of providing the notice, publication, court reporter fees, department expenses, appropriate department per diem expenses, and hearing room fees, as determined by the department.

(c) The issuance of securities described in subsection (d) is a transaction exempted from the registration requirements of ~~IC 23-2-1-3~~ **IC 23-19-3-1** if, at the time the applicant submits a written request to the department under subsection (a), the applicant also submits to the securities commissioner appointed under ~~IC 23-2-1-15(a)~~ **IC 23-19-6-1(a)** a notice in writing of all terms of the transaction and if the securities commissioner does not disallow the exemption within the next five (5) full business days.

(d) Subsection (c) applies to any security issued in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in that exchange and partly for cash, under terms and conditions approved by the department after a hearing held under this section.

SECTION 31. IC 35-45-6-1, AS AMENDED BY P.L.151-2006, SECTION 17, AND AS AMENDED BY P.L.173-2006, SECTION 53, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. As used in this chapter:

"Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

"Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or

(2) a union, an association, or a group, whether a legal entity or merely associated in fact.

"Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

"Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

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(1) A provision of ~~IC 23-2-1,~~ **IC 23-19,** or of a rule or order issued under ~~IC 23-2-1.~~ **IC 23-19.**
(2) A violation of IC 35-45-9.
(3) A violation of IC 35-47.
(4) A violation of IC 35-49-3.
(5) Murder (IC 35-42-1-1).
(6) Battery as a Class C felony (IC 35-42-2-1).
(7) Kidnapping (IC 35-42-3-2).
(8) Human and sexual trafficking crimes (IC 35-42-3.5).
~~(8)~~ *(9)* Child exploitation (IC 35-42-4-4).
~~(9)~~ *(10)* Robbery (IC 35-42-5-1).
~~(10)~~ *(11)* Carjacking (IC 35-42-5-2).
~~(11)~~ *(12)* Arson (IC 35-43-1-1).
~~(12)~~ *(13)* Burglary (IC 35-43-2-1).
~~(13)~~ *(14)* Theft (IC 35-43-4-2).
~~(14)~~ *(15)* Receiving stolen property (IC 35-43-4-2).
~~(15)~~ *(16)* Forgery (IC 35-43-5-2).
~~(16)~~ *(17)* Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).
~~(17)~~ *(18)* Bribery (IC 35-44-1-1).
~~(18)~~ *(19)* Official misconduct (IC 35-44-1-2).
~~(19)~~ *(20)* Conflict of interest (IC 35-44-1-3).
~~(20)~~ *(21)* Perjury (IC 35-44-2-1).
~~(21)~~ *(22)* Obstruction of justice (IC 35-44-3-4).
~~(22)~~ *(23)* Intimidation (IC 35-45-2-1).
~~(23)~~ *(24)* Promoting prostitution (IC 35-45-4-4).
~~(24)~~ *(25)* Promoting professional gambling (IC 35-45-5-4).
~~(25)~~ *(26)* Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
~~(26)~~ *(27)* Dealing in *or manufacturing* methamphetamine (IC 35-48-4-1.1).
~~(27)~~ *(28)* Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
~~(28)~~ *(29)* Dealing in a schedule IV controlled substance (IC 35-48-4-3).
~~(29)~~ *(30)* Dealing in a schedule V controlled substance (IC 35-48-4-4).
~~(30)~~ *(31)* Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
~~(31)~~ *(32)* Money laundering (IC 35-45-15-5).
~~(32)~~ *(33)* A violation of IC 35-47.5-5.

SECTION 32. IC 35-46-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. This chapter does not

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apply to the following:

(1) A gift or donation of money or other asset given to:

(A) a health care provider in the corporate name of the health care provider; or

(B) a health care provider that is organized under Section 501(c)(3) of the Internal Revenue Code.

(2) A gift or loan of money or other asset given by a person who receives services from a health care provider to a member of the person's family who:

(A) is employed by a health care provider; or

(B) owns, wholly or jointly, a health care provider.

(3) A bequest of personal property or devise of real property made in an executable will as described in IC 29-1-5-5 to a health care provider or an owner, employee, or agent of a health care provider.

(4) The purchase of a security (as defined in ~~IC 23-2-1-1)~~ **IC 23-19-1-2(28))** that is traded on a national or regional exchange.

(5) A gift or gratuity, not exceeding five hundred dollars ($500) in the aggregate per year per person receiving services from the health care provider, to an employee of a health care provider.

(6) A gift or donation of money or other asset given to purchase or otherwise acquire a product, service, or amenity for the use, entertainment, or enjoyment of persons receiving services from a health care provider.

SECTION 33. IC 36-7-12-32.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 32.1. Any security, including bonds issued in connection with a financing under this chapter, is exempt from the registration requirements of ~~IC 23-2-1~~ **IC 23-19** and other securities registration statutes.

SECTION 34. IC 36-7-23-55 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 55. Any security issued in connection with a financing under this chapter is exempt from the registration requirements of ~~IC 23-2-1~~ **IC 23-19** or any other securities registration law.

SECTION 35. IC 36-7.5-4-13, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. (a) All:

(1) property owned by the development authority;

(2) revenues of the development authority; and

(3) bonds issued by the development authority, the interest on the bonds, the proceeds received by a holder from the sale of bonds

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to the extent of the holder's cost of acquisition, proceeds received upon redemption before maturity, proceeds received at maturity, and the receipt of interest in proceeds;

are exempt from taxation in Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

(b) All securities issued under this chapter are exempt from the registration requirements of ~~IC 23-2-1~~ **IC 23-19** and other securities registration statutes.

SECTION 36. IC 36-9-31-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. Any security issued in connection with a financing under this chapter the interest on which is excludable from adjusted gross income tax is exempt from the registration requirements of ~~IC 23-2-1,~~ **IC 23-19** or any other securities registration law.

SECTION 37. IC 23-2-1 IS REPEALED [EFFECTIVE JULY 1, 2008].

SECTION 38. [EFFECTIVE JULY 1, 2008] **(a) The definitions in IC 23-19-1-2, as added by this act, apply throughout this SECTION.**

(b) The predecessor act exclusively governs all actions or proceedings that are pending on June 30, 2008, or may be instituted on the basis of conduct occurring before July 1, 2008, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after June 30, 2008, whichever is earlier.

(c) All effective registrations under the predecessor act and all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no-action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if IC 23-19, as added by this act, had not been enacted, and are considered to have been filed, issued, or imposed under IC 23-19, as added by this act, but are exclusively governed by the predecessor act.

(d) The predecessor act exclusively applies to an offer or sale made within one (1) year after June 30, 2008, under an offering made in good faith before July 1, 2008, on the basis of an exemption available under the predecessor act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1555, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 17, line 7, delete "bank or savings institution" and insert "**bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution**".

Page 20, line 38, delete "bank or savings institution;" and insert "**bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution;**".

and when so amended that said bill do pass.

(Reference is to HB 1555 as introduced.)

BARDON, Chair

Committee Vote: yeas 8, nays 0.

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