
HOUSE BILL No. 1717

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-2-5-0.5; IC 28-1-29.5.

Synopsis: Regulation of mortgage brokers. Transfers responsibility for the: (1) licensure of mortgage brokers; and (2) registration of mortgage loan originators; from the securities commissioner to the department of financial institutions (department). Requires the department to request a national criminal history background check through the state police department for all applicants for an initial license or registration after June 30, 2007. Establishes examination and education requirements for individuals applying for an initial license or registration after December 31, 2008. Establishes continuing education requirements for individuals renewing a license or registration after December 31, 2008. Requires a licensee to maintain on file with the department a complete set of fingerprints for: (1) the licensee, if the licensee is an individual; and (2) each registrant covered by the license. Prohibits certain acts by licensees and registrants. Creates the mortgage broker regulation account in the state general fund. Provides that licenses and registrations issued to mortgage brokers and mortgage loan originators before July 1, 2007, expire on January 1, 2008.

Effective: Upon passage; July 1, 2007.

Bardon

January 26, 2007, read first time and referred to Committee on Financial Institutions.

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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. 1717



A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

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

1 SECTION 1. IC 23-2-5-0.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]: **Sec. 0.5. This chapter does not apply to a person that,**
4 **after June 30, 2007, is required to be licensed or registered by the**
5 **department of financial institutions under IC 28-1-29.5.**

6 SECTION 2. IC 28-1-29.5 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2007]:

9 **Chapter 29.5. Residential Mortgage Brokers**
10 **Sec. 1. (a) This chapter does not apply to any of the following:**
11 **(1) Any attorney while engaging in the practice of law.**
12 **(2) Any certified public accountant, public accountant, or**
13 **accountant practitioner holding a certificate or registered**
14 **under IC 25-2.1 while performing the practice of accountancy**
15 **(as defined in IC 25-2.1-1-10).**
16 **(3) Any person licensed as a real estate broker or salesperson**
17 **under IC 25-34.1 to the extent that the person is rendering**



- 1 loan related services in the ordinary course of a transaction in
- 2 which a license as a real estate broker or salesperson is
- 3 required.
- 4 (4) Any broker-dealer, agent, or investment adviser registered
- 5 under IC 23-2-1.
- 6 (5) Any person that:
- 7 (A) procures;
- 8 (B) promises to procure; or
- 9 (C) assists in procuring;
- 10 a loan that is not subject to the Truth in Lending Act (15
- 11 U.S.C. 1601 through 1667e).
- 12 (6) Any community development corporation (as defined in
- 13 IC 4-4-28-2) acting as a subrecipient of funds from the
- 14 Indiana housing and community development authority
- 15 established by IC 5-20-1-3.
- 16 (7) The Indiana housing and community development
- 17 authority.
- 18 (8) Any person authorized to:
- 19 (A) sell and service a loan for the Federal National
- 20 Mortgage Association or the Federal Home Loan
- 21 Mortgage Association;
- 22 (B) issue securities backed by the Government National
- 23 Mortgage Association;
- 24 (C) make loans insured by the United States Department
- 25 of Housing and Urban Development or the United States
- 26 Department of Agriculture Rural Housing Service;
- 27 (D) act as a supervised lender or nonsupervised automatic
- 28 lender of the United States Department of Veterans
- 29 Affairs; or
- 30 (E) act as a correspondent of loans insured by the United
- 31 States Department of Housing and Urban Development.
- 32 (9) Any person who is a creditor, or proposed to be a creditor,
- 33 for any mortgage loan.
- 34 (10) Any person required to be licensed or registered by the
- 35 securities commissioner under IC 23-2-5.
- 36 (b) The burden of proof to establish:
- 37 (1) an exemption provided by this section; or
- 38 (2) any classification described in this section;
- 39 is on the party claiming the exemption or classification.
- 40 Sec. 2. As used in this chapter, "bona fide third party fee"
- 41 includes fees for the following:
- 42 (1) Credit reports, investigations, and appraisals obtained or

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performed in connection with a mortgage loan.
(2) Title examinations, abstracts of title, title insurance, property surveys, or similar services or documents performed or obtained in connection with a mortgage loan.
(3) The services provided by a mortgage broker in procuring possible business for a creditor if the fees are paid by the creditor.

Sec. 3. As used in this chapter, "borrower" means a person who seeks assistance from a mortgage broker in procuring a mortgage loan from a creditor, whether or not the person actually obtains the mortgage loan.

Sec. 4. As used in this chapter, "certificate of registration" means a certificate issued by the department authorizing an individual to engage in origination activities on behalf of a licensee.

Sec. 5. As used in this chapter, "creditor" means a person:

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

Sec. 6. As used in this chapter, "license" means a license issued by the department authorizing a person to engage in the mortgage brokerage business.

Sec. 7. As used in this chapter, "licensee" means a person who is issued a license under this chapter.

Sec. 8. (a) As used in this chapter, "mortgage broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring a mortgage loan from a third party or any other person, whether or not the person seeking the mortgage loan actually obtains the mortgage loan.

(b) The term does not include:

- (1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:
 - (A) regulated by any agency of the United States or any state; and
 - (B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;
- (2) any insurance company; or
- (3) any person arranging financing for the sale of the person's

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Sec. 9. As used in this chapter, "mortgage brokerage business" means a person acting as a mortgage broker.

Sec. 10. (a) As used in this chapter, "mortgage loan" means a loan that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:

- (1) designed primarily for occupancy of one (1) to four (4) families; and
- (2) that are or will be occupied by a borrower as the borrower's principal dwelling.

(b) The term does not include:

- (1) an open end credit plan;
- (2) a reverse mortgage transaction; or
- (3) a loan made by a person described in section 1 of this chapter.

Sec. 11. As used in this chapter, "national criminal history background check" has the meaning set forth in IC 10-13-3-12.

Sec. 12. As used in this chapter, "origination activities" means communicating with or assisting a borrower in selecting mortgage loan products or terms.

Sec. 13. (a) As used in this chapter, "originator" means a person engaged in origination activities.

(b) The term does not include a person who performs origination activities for any entity that is not a mortgage broker under section 8 of this chapter.

Sec. 14. As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

Sec. 15. As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

Sec. 16. As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

Sec. 17. (a) After June 30, 2007, a person shall not:

- (1) engage in the mortgage brokerage business in Indiana

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1 without having obtained a license from the department under
 2 this chapter; or
 3 (2) engage in origination activities in Indiana without having
 4 obtained a certificate of registration from the department
 5 under this chapter.
 6 (b) The director may request evidence of compliance with
 7 subsection (a) at:
 8 (1) the time of application;
 9 (2) the time of renewal of a license or registration; or
 10 (3) any other time considered necessary by the director.
 11 (c) For purposes of subsection (b), evidence of compliance with
 12 this section may include:
 13 (1) criminal background checks, including a national criminal
 14 history background check by the Federal Bureau of
 15 Investigation;
 16 (2) credit histories; or
 17 (3) other background checks considered necessary by the
 18 director.
 19 (d) After June 30, 2007, a person desiring to engage or continue
 20 in the mortgage brokerage business shall apply to the department
 21 for a license or a renewal of a license under this chapter.
 22 (e) After June 30, 2007, an individual employed by a licensee to
 23 engage in origination activities shall be registered, by the licensee,
 24 with the department under section 21(c) of this chapter.
 25 Sec. 18. (a) Except as otherwise provided in this chapter, this
 26 section applies to an application for an initial license submitted to
 27 the department after June 30, 2007.
 28 (b) An application for an initial license must contain the
 29 following:
 30 (1) An irrevocable consent appointing the secretary of state to
 31 be the applicant's agent to receive service of any lawful
 32 process in any noncriminal suit, action, or proceeding against
 33 the applicant arising from the violation of any provision of
 34 this chapter. Service shall be made in accordance with the
 35 Indiana Rules of Trial Procedure.
 36 (2) Evidence of the bond required by section 22 of this
 37 chapter.
 38 (3) An application fee of five hundred dollars (\$500).
 39 (4) An affidavit affirming that none of the applicant's ultimate
 40 equitable owners, directors, managers, officers, or proposed
 41 registrants:
 42 (A) has been convicted of or pleaded guilty to, within ten

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- (10) years of the application; or
- (B) is subject to any pending criminal prosecution or administrative enforcement action for;
 - an offense in any jurisdiction involving fraud, deceptive acts, theft, passing bad checks, forgery, money laundering, drug trafficking, dishonest dealing, or any criminal offense involving money or securities.
- (5) For an application submitted to the department after December 31, 2008, evidence that the applicant for the license, if the applicant is an individual, has:
 - (A) completed the education requirements under section 19 of this chapter; and
 - (B) achieved a passing score on the examination adopted by the department under section 20 of this chapter.
- (6) A registration form setting forth the name, home address, home telephone number, and Social Security number of each proposed registrant of the applicant.
- (7) For an application submitted to the department after December 31, 2008, evidence that the license applicant's proposed registrants have:
 - (A) completed the education requirements of section 19 of this chapter; and
 - (B) achieved a passing score on the examination adopted by the department under section 20 of this chapter.
- (8) Information, including fingerprints, needed to facilitate the national criminal history background check required by section 21 of this chapter for:
 - (A) the applicant for the license, if the applicant is an individual; and
 - (B) each proposed registrant of the applicant.

Sec. 19. (a) This section applies to:

- (1) an applicant for an initial license under this chapter, if the applicant is an individual; and
- (2) each proposed registrant of the applicant described in subdivision (1);

for an application submitted to the department after December 31, 2008.

(b) As part of the application submitted to the department under section 18 of this chapter, an applicant for an initial license must provide evidence that, during the twenty-four (24) month period immediately preceding the application, each individual described in subsection (a) completed at least forty (40) hours of

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1 live classroom instruction, in a course of study approved by the
2 department, that includes the following:

3 (1) At least twelve (12) hours of instruction concerning real
4 estate finance and residential lending.

5 (2) A total of at least twelve (12) hours of instruction in the
6 following subjects:

7 (A) Indiana real estate law, including IC 24-9.

8 (B) Federal, state, and local civil rights laws.

9 (C) Current case law on foreclosure and residential
10 mortgage lending.

11 (D) Methods of eliminating the effects of predatory lending
12 and unsound lending practices.

13 (3) At least eight (8) hours of instruction in real estate
14 appraisal, including instruction in uniform standards of
15 professional appraisal practice.

16 (4) At least eight (8) hours of instruction in ethics, including
17 the responsibilities of mortgage brokers and originators with
18 respect to fiduciary duties, confidentiality, and consumer
19 counseling.

20 Sec. 20. (a) This section applies to:

21 (1) an applicant for an initial license under this chapter, if the
22 applicant is an individual; and

23 (2) each proposed registrant of the applicant described in
24 subdivision (1);

25 for an application submitted to the department after December 31,
26 2008.

27 (b) As part of the application submitted to the department
28 under section 18 of this chapter, an applicant for an initial license
29 must provide evidence that, during the twenty-four (24) month
30 period immediately preceding the application, each person
31 described in subsection (a) achieved a passing score on a written or
32 an electronic examination adopted by the department and
33 administered by the department or by a third party approved by
34 the department. The examination adopted by the department
35 under this section must be designed to:

36 (1) determine the examinee's competency in primary and
37 subordinate mortgage financing transactions; and

38 (2) test the examinee's knowledge of this chapter and any
39 rules adopted by the department under this chapter.

40 Sec. 21. (a) Upon receipt of an application and the applicant's
41 payment of the application fee under section 18(b)(3) of this
42 chapter, the department shall do the following:

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(1) Request a national criminal history background check through the state police department for all persons described in section 18(b)(8) of this chapter. The state police department shall:

(A) process all requests from the department for national criminal history background checks under this chapter; and

(B) forward all fingerprints submitted by an applicant to the Federal Bureau of Investigation for the release of criminal history information for purposes of licensure or registration under this chapter.

The applicant shall pay any fees associated with the national criminal history background check required under this chapter for the applicant and the applicant's proposed registrants.

(2) Check the qualifications, background, licensing status, and service history of the applicant and each proposed registrant of the applicant by doing either of the following:

(A) Contacting the applicable regulatory agencies in all other states in which the applicant or the applicant's proposed registrants are known to have engaged in the mortgage brokerage business or in origination activities.

(B) As authorized by the department, and upon availability, accessing a multistate automated licensing system for mortgage brokers and originators, including the National Mortgage Licensing Database proposed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

(b) After reviewing the application and conducting the background checks required under subsection (a), the department shall issue a license to the applicant if the department determines that the applicant meets the licensure requirements of this chapter.

The department may deny a license under this chapter if:

(1) the applicant or any of the applicant's ultimate equitable owners, directors, managers, or officers has committed any violation of this chapter or any rule adopted by the department under this chapter; or

(2) the applicant or any of the applicant's ultimate equitable owners, directors, managers, or officers:

(A) has been convicted of or pleaded guilty to, within ten (10) years of the application; or

(B) is subject to any pending criminal prosecution or

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1 **administrative enforcement action for;**
2 **an offense, in any jurisdiction, involving fraud, deceptive acts,**
3 **theft, passing bad checks, forgery, money laundering, drug**
4 **trafficking, dishonest dealing, or any criminal offense**
5 **involving money or securities.**
6 **(c) If the department approves an application for licensure**
7 **under subsection (b), the department shall issue a certificate of**
8 **registration for each proposed registrant identified in the**
9 **application who meets the registration requirements of this**
10 **chapter. The department may deny a certificate of registration for**
11 **a proposed registrant if:**
12 **(1) the proposed registrant has committed any violation of**
13 **this chapter or any rule adopted by the department under this**
14 **chapter; or**
15 **(2) the proposed registrant:**
16 **(A) has been convicted of or pleaded guilty to, within ten**
17 **(10) years of the application; or**
18 **(B) is subject to any pending criminal prosecution or**
19 **administrative enforcement action for;**
20 **an offense, in any jurisdiction, involving fraud, deceptive acts,**
21 **theft, passing bad checks, forgery, money laundering, drug**
22 **trafficking, dishonest dealing, or any criminal offense**
23 **involving money or securities.**
24 **(d) If an application for a license is:**
25 **(1) denied by the department under this section; or**
26 **(2) withdrawn by the applicant before the department makes**
27 **a determination under this section;**
28 **the department shall retain the application fee submitted with the**
29 **application under section 18(b)(3) of this chapter.**
30 **Sec. 22. To maintain a license under this chapter, a licensee**
31 **must do the following:**
32 **(1) Maintain a bond satisfactory to the department in the**
33 **amount of fifty thousand dollars (\$50,000), which must be in**
34 **favor of the state and secure payment of damages to any**
35 **person aggrieved by any violation of this chapter by the**
36 **licensee or a registrant of the licensee.**
37 **(2) Maintain on file with the department a complete set of**
38 **fingerprints for:**
39 **(A) the licensee, if the licensee is an individual; and**
40 **(B) each registrant covered by the license described in**
41 **clause (A).**
42 **Sec. 23. (a) A licensee may not continue to engage in the**

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1 mortgage brokerage business unless the licensee's license is
2 renewed biennially. A registrant may not continue to engage in
3 origination activities unless the registrant's certificate of
4 registration is renewed biennially. Subject to subsection (b), a
5 licensee shall renew the licensee's license and the certificates of
6 registration of the licensee's registrants by filing with the
7 department, at least thirty (30) days before the expiration of the
8 license, an application containing any information the department
9 may require to indicate any material change from the information
10 contained in the applicant's:

- 11 (1) original application under section 18 of this chapter; or
- 12 (2) most recent renewal application under this section.

13 (b) This subsection applies to the renewal of a license that
14 expires after July 31, 2007. In addition to the information
15 described in subsection (a), a renewal application to which this
16 subsection applies must contain the following:

- 17 (1) A renewal application fee of two hundred fifty dollars
18 (\$250).
- 19 (2) A set of fingerprints for any registrant who will perform
20 origination activities under the applicant's license, if the
21 department does not have a set of fingerprints on file for the
22 individual under section 22(2) of this chapter.
- 23 (3) For an application to renew a license that expires after
24 January 31, 2009, evidence that any registrant who will
25 perform origination activities under the applicant's license
26 has:

27 (A) completed the education requirements described in
28 section 19 of this chapter; and

29 (B) achieved a passing score on the examination adopted
30 by the department under section 20 of this chapter;

31 if the department does not have the evidence described in this
32 subdivision on file for the individual.

33 (4) For an application to renew a license that expires after
34 January 31, 2009, evidence that:

35 (A) the applicant for the renewal license, if the applicant is
36 an individual; and

37 (B) each proposed registrant of the applicant described in
38 clause (A);

39 has completed the continuing education requirements
40 described in section 24 of this chapter.

41 (c) After reviewing the application and conducting any
42 necessary background checks for an individual described in

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1 subsection (b)(2), the department shall renew the license of the
2 applicant if the department determines that the applicant meets the
3 licensure requirements of this chapter. The department may refuse
4 to renew a license under this section for any of the reasons set forth
5 in section 21(b) of this chapter.

6 (d) If the department approves a license renewal application
7 under subsection (c), the department shall:

8 (1) renew the registration of any proposed registrant
9 identified in the application who:

10 (A) meets the registration requirements of this chapter;
11 and

12 (B) engaged in origination activities as a registrant for the
13 applicant or another licensee during the twenty-four (24)
14 month period immediately preceding the date of the
15 application; and

16 (2) issue a new certificate of registration for any proposed
17 registrant identified in the application who:

18 (A) meets the registration requirements of this chapter;
19 and

20 (B) did not engage in origination activities as a registrant
21 for the applicant or another licensee during the
22 twenty-four (24) month period immediately preceding the
23 date of the application.

24 The department may refuse to renew or issue a certificate of
25 registration for a proposed registrant for any of the reasons set
26 forth in section 21(c) of this chapter.

27 (e) If an application for a renewal license is:

28 (1) denied by the department under this section; or

29 (2) withdrawn by the applicant before the department makes
30 a determination under this section;

31 the department shall retain the application fee submitted with the
32 application under subsection (b)(1).

33 Sec. 24. (a) This section applies to:

34 (1) an applicant for a renewal license under section 23 of this
35 chapter, if the applicant is an individual; and

36 (2) except as provided in subsection (c), each proposed
37 registrant of the applicant described in subdivision (1);

38 for an application to renew a license that expires after January 31,
39 2009.

40 (b) As part of the renewal application submitted to the
41 department under section 23 of this chapter, an applicant for a
42 renewal license must provide evidence that, during the twenty-four

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1 (24) month period immediately preceding the application, each
2 individual described in subsection (a) completed at least sixteen
3 (16) hours of continuing education, in a course of study approved
4 by the department, that includes the following:

5 (1) At least twelve (12) hours of live classroom instruction in
6 Indiana real estate law and emerging trends in Indiana real
7 estate.

8 (2) At least four (4) hours of live classroom instruction in
9 ethics, including the responsibilities of mortgage brokers and
10 originators with respect to fiduciary duties, confidentiality,
11 and consumer counseling.

12 (c) If an individual described in subsection (a)(2) has not
13 engaged in origination activities as a registrant for the applicant or
14 another licensee during the twenty-four (24) month period
15 described in subsection (b), the licensee shall provide the evidence
16 required by section 23(b)(3) of this chapter instead of the evidence
17 required by subsection (b).

18 (d) In determining the acceptability of a continuing education
19 program for purposes of this section, the department may approve
20 a program of instruction provided by a licensee for the licensee's
21 employees, if the program meets the requirements of subsection (b)
22 and is otherwise acceptable to the department.

23 Sec. 25. (a) If a material fact or statement included in:

24 (1) an initial application under section 18 of this chapter; or
25 (2) a renewal application under section 23 of this chapter;
26 changes after the application has been submitted, the applicant
27 shall provide written notice to the department of the change.

28 (b) The department may revoke or refuse to renew the license
29 or registration of any person who:

30 (1) is required to submit a written notice under this section
31 and fails to provide the required notice not later than two (2)
32 business days after the person discovers or should have
33 discovered the change; or

34 (2) would not qualify for licensure or registration under this
35 chapter as a result of the change in a material fact or
36 statement.

37 Sec. 26. (a) If:

38 (1) a licensee seeks to have a previously unregistered
39 employee begin engaging in origination activities; or

40 (2) a licensee:
41 (A) employs an individual who is or was registered under
42 the license of another licensee; and

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1 (B) seeks to have the registrant engage in origination
2 activities for the licensee;
3 the licensee shall, not later than five (5) business days after the
4 employee first conducts origination activities for the licensee,
5 submit to the department, on a form prescribed by the department,
6 notice of the employee's employment.

7 (b) If an employee described in subsection (a) has not previously
8 been registered under this chapter, the licensee shall submit with
9 the notice required by subsection (a):

10 (1) a set of fingerprints for the employee, as required by
11 section 22(2) of this chapter; and

12 (2) evidence that the employee has:

13 (A) completed the education requirements described in
14 section 19 of this chapter; and

15 (B) achieved a passing score on the examination adopted
16 by the department under section 20 of this chapter.

17 Sec. 27. (a) The department may deny, suspend, or revoke the
18 license of a licensee for any of the following reasons:

19 (1) The licensee fails to maintain the bond required by section
20 22(1) of this chapter.

21 (2) The licensee becomes insolvent.

22 (3) The licensee or any of the licensee's ultimate equitable
23 owners, directors, managers, or officers commits any
24 violation of this chapter or any rule adopted by the
25 department under this chapter.

26 (4) The licensee or any of the licensee's ultimate equitable
27 owners, directors, managers, or officers:

28 (A) has been convicted of or pleaded guilty to, at any time
29 during the term of the license or within ten (10) years of its
30 issuance; or

31 (B) is subject to any pending criminal prosecution or
32 administrative enforcement action for;

33 an offense, in any jurisdiction, involving fraud, deceptive acts,
34 theft, passing bad checks, forgery, money laundering, drug
35 trafficking, dishonest dealing, or any criminal offense
36 involving money or securities.

37 (5) The licensee has knowingly filed with the department any
38 document or statement that:

39 (A) contains any false representation of a material fact;

40 (B) fails to state a material fact; or

41 (C) contains a representation that becomes false after the
42 filing but during the term of the license, if the licensee does

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not provide the notice required by section 25 of this chapter.

(b) The department may deny, suspend, or revoke the registration of a registrant for any of the following reasons:

(1) The registrant commits any violation of this chapter or any rule adopted by the department under this chapter.

(2) The registrant:

(A) has been convicted of or pleaded guilty to, at any time during the term of the registration or within ten (10) years of its issuance; or

(B) is subject to any pending criminal prosecution or administrative enforcement action for;

an offense, in any jurisdiction, involving fraud, deceptive acts, theft, passing bad checks, forgery, money laundering, drug trafficking, dishonest dealing, or any criminal offense involving money or securities.

(3) The registrant has knowingly filed with the department any document or statement that:

(A) contains any false representation of a material fact;

(B) fails to state a material fact; or

(C) contains a representation that becomes false after the filing but during the term of the registration, if the registrant, or the licensee for which the registrant performs origination activities, does not provide the notice required by section 25 of this chapter.

(c) The department may not enter a final order denying, suspending, or revoking the license of a licensee or the registration of a registrant without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the department may by summary order deny, suspend, or revoke a license or registration pending final determination of any proceeding under this section. Upon entering a summary order, the department shall promptly notify all interested parties:

(1) that the summary order has been entered;

(2) of the reasons for the summary order; and

(3) that upon receipt by the department of a written request from a party, the matter will be set for hearing to commence not later than fifteen (15) business days after receipt of the request.

If a hearing is not requested by a party under subdivision (3) or ordered by the department, the order remains in effect until it is

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1 modified or vacated by the department. If a hearing is requested
2 or ordered, the department, after notice of the hearing has been
3 given to all interested parties and the hearing has been held, may
4 modify or vacate the order or extend it until final determination.

5 (d) IC 4-21.5 does not apply to a proceeding under this section.

6 Sec. 28. (a) To be enforceable, a contract for the services of a
7 mortgage broker must be in writing and signed by the contracting
8 parties.

9 (b) At the time a contract for the services of a mortgage broker
10 is signed, the mortgage broker shall provide a copy of the signed
11 contract to each of the other parties to the contract.

12 (c) This section does not apply to a contract that provides for the
13 payment of referral fees by a creditor or a third party.

14 Sec. 29. A person may not, in connection with a contract for the
15 services of a mortgage broker, either directly or indirectly, do any
16 of the following:

- 17 (1) Employ any device, scheme, or artifice to defraud.
- 18 (2) Make any untrue statements of a material fact or fail to
19 disclose a material fact necessary to make a statement not
20 misleading.
- 21 (3) Engage in any act, practice, or course of business that
22 operates or would operate as a fraud or deceit upon any
23 person.
- 24 (4) Collect or solicit any consideration, except a bona fide
25 third party fee, in connection with a mortgage loan until the
26 mortgage loan is closed.

27 Sec. 30. (a) Each mortgage broker agreement shall be given an
28 account number. Each licensee shall keep and maintain the
29 following records or their electronic equivalent:

- 30 (1) A file for each borrower that contains the following:
 - 31 (A) The name and address of the borrower.
 - 32 (B) A copy of the signed mortgage broker agreement.
 - 33 (C) A copy of any other papers or instruments used in
34 connection with the mortgage broker agreement and
35 signed by the borrower.
 - 36 (D) If a mortgage loan is obtained for the borrower, the
37 name and address of the creditor.
 - 38 (E) If a mortgage loan is accepted by the borrower, a copy
39 of the loan agreement.
 - 40 (F) The amount of the mortgage broker's fee that the
41 borrower has paid. If there is an unpaid balance, the status
42 of any collection efforts.

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(2) All receipts from or for the account of borrowers and all disbursements to or for the account of borrowers, recorded so that the transactions are readily identifiable.

(3) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared not later than thirty (30) days after a request by the department for the information.

(4) A sample of:

(A) all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical;

(B) scripts of any recording, radio, or television announcement; and

(C) any sales kits or literature; used to solicit borrowers.

(b) The records described in subsection (a) shall be kept for two (2) years in the licensee's principal office and must be separate or readily identifiable from the records of any other business that is conducted in the office of the mortgage broker.

Sec. 31. (a) As used in this section, "fees" refers to:

(1) any bona fide third party fee payable by a borrower in connection with a mortgage loan; and

(2) any fee that the borrower has agreed to pay to a licensee for the licensee's services as a mortgage broker.

(b) A licensee or registrant of the licensee shall provide prompt written notice to a borrower if any fees described in subsection (a) increase by:

(1) more than ten percent (10%); or

(2) at least one hundred dollars (\$100);

whichever is greater, from the amount originally reported to the borrower.

Sec. 32. A licensee or registrant shall not promise to refinance a mortgage loan in the future:

(1) at a lower interest rate; or

(2) under more favorable terms for the borrower;

unless the promise is set forth in writing and initialed by the borrower.

Sec. 33. (a) As used in this section, "appraisal company" means a person that employs or retains the services of one (1) or more real estate appraisers.

(b) As used in this section, "immediate family", with respect to an individual, refers to:

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- 1 (1) the individual's spouse who resides in the individual's
- 2 household; and
- 3 (2) any dependent child of the individual.
- 4 (c) As used in this section, "real estate appraiser" means a
- 5 person who:
- 6 (1) is licensed as a real estate broker under IC 25-34.1 and
- 7 performs real estate appraisals within the scope of the
- 8 person's license; or
- 9 (2) holds a real estate appraiser license or certificate issued
- 10 under IC 25-34.1-8.
- 11 (d) A licensee or registrant shall not knowingly bribe, coerce, or
- 12 intimidate another person to corrupt or improperly influence the
- 13 independent judgment of a real estate appraiser with respect to the
- 14 value of any real estate offered as security for a mortgage loan.
- 15 (e) Except as provided in subsection (f), after June 30, 2007:
- 16 (1) a licensee or registrant;
- 17 (2) a member of the immediate family of a licensee or
- 18 registrant; or
- 19 (3) a person described in subdivision (1) or (2) in combination
- 20 with one (1) or more other persons described in subdivision
- 21 (1) or (2);
- 22 may not own or control a majority interest in an appraisal
- 23 company.
- 24 (f) This subsection applies to a person or combination of persons
- 25 described in subsection (e) who own or control a majority interest
- 26 in an appraisal company on June 30, 2007. The prohibition set
- 27 forth in subsection (e) does not apply to a person or combination
- 28 of persons described in this subsection, subject to the following:
- 29 (1) The interest in the appraisal company owned or controlled
- 30 by the person or combination of persons described in
- 31 subsection (e) shall not be increased after June 30, 2007.
- 32 (2) The interest of a licensee or registrant shall not be
- 33 transferred to a member of the licensee's or registrant's
- 34 immediate family.
- 35 (3) If the department determines that any person or
- 36 combination of persons described in subsection (e) has
- 37 violated this chapter, the department may order one (1) or
- 38 more of the persons to divest their interest in the appraisal
- 39 company. The department may exercise the remedy provided
- 40 by this subdivision in addition to, or as a substitute for, any
- 41 other remedy available to the department under this chapter.
- 42 (g) A licensee or registrant shall not refer a borrower to an

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1 appraisal company if the licensee, the registrant, or a member of
2 the immediate family of the licensee or registrant has any of the
3 following financial relationships with the appraisal company:

- 4 (1) An ownership or investment interest in the appraisal
- 5 company, whether through debt, equity, or other means.
- 6 (2) Any compensation arrangement involving remuneration,
- 7 whether in cash or in kind, directly or indirectly, to or from
- 8 the appraisal company.

9 A licensee or registrant shall not enter into an arrangement,
10 including a cross referral arrangement, that assures referrals by
11 a licensee or registrant to a particular appraisal company, if the
12 arrangement would violate this subsection.

13 **Sec. 34. (a) As used in this section, "settlement service provider"**
14 **means a person that provides services in connection with the**
15 **closing of a real estate transaction, including the provision of title**
16 **examinations or title insurance.**

17 (b) A licensee or registrant may not refer a borrower to a
18 settlement service provider unless the licensee or registrant
19 provides the borrower with written notice of the following:

- 20 (1) Any business relationship that exists between the licensee
- 21 or registrant and the settlement service provider, including
- 22 any financial benefit that the licensee or registrant may
- 23 receive because of the relationship or referral.
- 24 (2) Any ownership interest that the licensee or registrant has
- 25 in the settlement service provider.
- 26 (3) The estimated charge or range of charges for the services
- 27 to be provided by the settlement service provider.

28 (c) The written notice required under subsection (b) must
29 include the following statement in at least 16 point bold face type:
30 "There may be other settlement service providers available to
31 provide similar services to you. You are free to ask other providers
32 about their services and charges and to engage another settlement
33 service provider of your own choosing."

34 (d) A licensee or registrant shall retain, for at least four (4)
35 years, evidence that the borrower received the written disclosures
36 required by this section.

37 **Sec. 35. A licensee or registrant has a fiduciary duty with**
38 **respect to any funds belonging to others that come into the**
39 **possession of the licensee or registrant, including money received**
40 **by or on behalf of a borrower. In accordance with this duty, the**
41 **licensee or registrant shall:**

- 42 (1) safeguard and account for any funds handled for a

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- 1 **borrower;**
- 2 **(2) follow any reasonable and lawful instructions from the**
- 3 **borrower concerning the funds; and**
- 4 **(3) act with reasonable skill, care, and diligence with respect**
- 5 **to the funds.**

6 **Sec. 36. If a transaction for which a mortgage broker has**
 7 **charged any fee is rescinded by any person under the Truth in**
 8 **Lending Act (15 U.S.C. 1601-1667e), the mortgage broker, not later**
 9 **than twenty (20) calendar days after a notice of the rescission has**
 10 **been delivered to the creditor, shall return to the person any**
 11 **consideration that has been given to the mortgage broker other**
 12 **than bona fide third party fees.**

- 13 **Sec. 37. The department may do the following:**
- 14 **(1) Adopt rules under IC 4-22-2 to implement this chapter.**
 - 15 **(2) Make investigations and examinations:**
 - 16 **(A) in connection with any application for the issuance or**
 - 17 **renewal of a license or a certificate of registration;**
 - 18 **(B) at intermittent periods in connection with any license**
 - 19 **or certificate of registration already issued; or**
 - 20 **(C) whenever it appears to the department, on the basis of**
 - 21 **a complaint or other information, that reasonable grounds**
 - 22 **exist for the belief that an investigation or examination is**
 - 23 **necessary or advisable to protect the public interest.**
 - 24 **The department may charge the reasonable costs of an**
 - 25 **investigation or examination conducted under this subdivision**
 - 26 **to the person that is examined.**
 - 27 **(3) Issue notices and orders, including cease and desist orders,**
 - 28 **after making an investigation or examination under**
 - 29 **subdivision (2). The department may also bring an action on**
 - 30 **behalf of the state to enjoin a person from violating this**
 - 31 **chapter. Except as provided in sections 27 and 38 of this**
 - 32 **chapter, the department shall notify the person that an order**
 - 33 **or notice has been issued, of the reasons for it, and that a**
 - 34 **hearing will be set not later than fifteen (15) days after the**
 - 35 **department receives a written request from the person**
 - 36 **requesting a hearing.**
 - 37 **(4) Hold and conduct hearings.**
 - 38 **(5) Hear evidence.**
 - 39 **(6) Subject to sections 27 and 38 of this chapter, conduct**
 - 40 **inquiries with or without hearings.**
 - 41 **(7) Receive reports of investigators or other officers or**
 - 42 **employees of the state or of any political subdivision of the**

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state.
(8) Administer oaths or cause them to be administered.
(9) Subpoena witnesses and compel their attendance and testimony.
(10) Compel the production of books, records, and other documents.
(11) Order depositions to be taken of any witness residing in or outside Indiana. Depositions under this subdivision shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the department.
(12) Order that each witness appearing under the department's order to testify before the department shall receive the fees and mileage allowances provided for witnesses in civil cases.
(13) Provide interpretive opinions or issue a determination that the department will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The department may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:
 (A) occurred before; or
 (B) is occurring on;
 the date the opinion or determination is requested.
Sec. 38. (a) If it appears to the department that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter, or of a rule or an order adopted or issued under this chapter, the department may investigate and may issue:
 (1) with a prior hearing, if there exists no substantial threat of immediate irreparable harm; or
 (2) without a prior hearing, if there exists a substantial threat of immediate irreparable harm;
orders and notices as the department determines to be in the public interest, including cease and desist orders and orders to show cause. After notice and hearing, the department may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or an order under this chapter.
 (b) Upon the issuance of an order or a notice without a prior

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1 hearing by the department under subsection (a)(2), the
2 commissioner shall promptly notify the respondent:

- 3 (1) that the order or notice has been issued;
- 4 (2) of the reasons the order or notice has been issued; and
- 5 (3) that upon the receipt of a written request the matter will
- 6 be set for a hearing to commence not later than fifteen (15)
- 7 business days after receipt of the request unless the
- 8 respondent consents to a later date.

9 If a hearing is not requested under subdivision (3) and not ordered
10 by the department, an order remains in effect until it is modified
11 or vacated by the department. If a hearing is requested or ordered,
12 the department, after giving notice of the hearing, may modify or
13 vacate the order or extend it until final determination.

14 Sec. 39. (a) This section applies in any hearing, inquiry, or
15 investigation conducted under this chapter in which:

- 16 (1) a person disobeys any lawful:
 - 17 (A) subpoena issued under this chapter; or
 - 18 (B) order or demand requiring the production of any
 - 19 books, accounts, papers, records, documents, or other
 - 20 evidence or information as provided in this chapter; or
- 21 (2) a witness refuses to:
 - 22 (A) appear when subpoenaed;
 - 23 (B) testify to any matter about which the witness may be
 - 24 lawfully interrogated; or
 - 25 (C) take or subscribe to any oath required by this chapter.

26 (b) In a proceeding to which this section applies, the department
27 or the circuit or superior court of the county in which the hearing,
28 inquiry, or investigation is pending shall, subject to section 40 of
29 this chapter:

- 30 (1) compel compliance with the lawful requirements of the
- 31 subpoena, order, or demand;
- 32 (2) compel the production of the necessary or required books,
- 33 accounts, papers, records, documents, or other evidence or
- 34 information; or
- 35 (3) compel any witness to appear in any Indiana county and
- 36 to testify to any matter about which the witness may lawfully
- 37 be interrogated, and to take or subscribe to any oath required.

38 (c) If a person fails, refuses, or neglects to comply with a court
39 order under this section, the person shall be punished for contempt
40 of court.

41 Sec. 40. If a witness, in any hearing, inquiry, or investigation
42 conducted under this chapter, refuses to answer any question or

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1 produce any item, the department may file a written petition with
 2 the circuit or superior court in the county in which the hearing,
 3 investigation, or inquiry is being conducted requesting a hearing
 4 on the refusal. The court shall hold a hearing to determine if the
 5 witness may refuse to answer the question or produce the item. If
 6 the court determines that the witness, based upon the witness's
 7 privilege against self-incrimination, may properly refuse to answer
 8 or produce an item, the department may make a written request
 9 that the court grant use immunity to the witness. Upon written
 10 request of the department, the court shall grant use immunity to a
 11 witness. The court shall instruct the witness, by written order or in
 12 open court, that:

- 13 (1) any evidence the witness gives, or evidence derived from
- 14 that evidence, may not be used in any criminal proceedings
- 15 against that witness, unless the evidence is:
- 16 (A) volunteered by the witness; or
- 17 (B) otherwise not in response to a question asked of the
- 18 witness; and
- 19 (2) the witness must answer the questions asked and produce
- 20 the items requested.

21 A grant of use immunity does not prohibit evidence that the
 22 witness gives in a hearing, an investigation, or an inquiry from
 23 being used in a prosecution for perjury under IC 35-44-2-1. If a
 24 witness refuses to give the evidence after the witness has been
 25 granted use immunity, the court may find the witness in contempt.

26 Sec. 41. (a) In any prosecution, action, suit, or proceeding based
 27 upon or arising out of this chapter, the department may sign a
 28 certificate showing compliance or noncompliance with this chapter
 29 by any person. A certificate described in this subsection constitutes
 30 prima facie evidence of compliance or noncompliance with this
 31 chapter and is admissible in evidence in any action at law or in
 32 equity to enforce this chapter.

33 (b) Copies of any statement or document filed with the
 34 department, and copies of any records of the department, certified
 35 to by the director or any deputy, are admissible in any prosecution,
 36 action, suit, or proceeding based upon, or arising out of or under,
 37 this chapter to the same effect as the original of the statement,
 38 document, or record would be if actually produced.

39 Sec. 42. (a) If the department determines, after a hearing, that
 40 a person has violated this chapter, the department may, in addition
 41 to all other remedies, impose a civil penalty upon the person in an
 42 amount not to exceed ten thousand dollars (\$10,000) for each

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1 violation.

2 (b) The department may bring an action in the circuit or
3 superior court of Marion County to enforce payment of any
4 penalty imposed under this section.

5 (c) A civil penalty paid under this section must be deposited in
6 the financial institutions fund established by IC 28-11-2-9.

7 **Sec. 43.** A person who violates this chapter in connection with
8 a contract for the services of a mortgage broker is liable to any
9 person damaged by the violation for the amount of the actual
10 damages suffered, interest at the legal rate, and attorney's fees. If
11 a person violates any provision of this chapter in connection with
12 a contract for mortgage brokerage services, the contract is void,
13 and the borrower is entitled to receive from the mortgage broker
14 all sums paid to the mortgage broker.

15 **Sec. 44.** A person who knowingly violates this chapter commits
16 a Class D felony.

17 **Sec. 45. (a)** An appeal may be taken by:

18 (1) any applicant for a license, or any applicant for a
19 certificate of registration as an originator under the license,
20 from any final order of the department concerning the
21 application or proposed registration;

22 (2) any person against whom a civil penalty is imposed under
23 section 42(a) of this chapter, from the final order of the
24 department imposing the civil penalty; or

25 (3) any person who is named as a respondent, from any final
26 order issued by the department under this chapter;

27 to the Marion County circuit court or to the circuit or superior
28 court of the county in which the person taking the appeal resides
29 or maintains a place of business.

30 (b) Not later than twenty (20) days after the entry of the order
31 that is the subject of the appeal, the department shall be served
32 with:

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

36 (2) a demand in writing from the appellant for a certified
37 transcript of the record and of all papers on file in the
38 department's office affecting or relating to the order; and

39 (3) a bond in the penal sum of five hundred dollars (\$500)
40 payable to the state with sufficient surety approved by the
41 department, conditioned upon the faithful prosecution of the
42 appeal to final judgment and the payment of all costs that are

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adjudged against the appellant.

(c) Not later than ten (10) days after the department is served with the items set forth in subsection (b), the department shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The department 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 oral or written evidence concerning the order of the department from which the appeal is taken. If the order of the department is reversed, the court shall in its mandate specifically direct the department as to the department's further action in the matter. The department is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant may, not earlier than thirty (30) days after the date the order is affirmed, file a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

Sec. 46. (a) The mortgage broker regulation account is created in the state general fund. The money in the mortgage broker regulation account may be used only for the regulation of mortgage brokers under this chapter. The mortgage broker regulation account shall be administered by the treasurer of state. The money in the mortgage broker regulation account does not revert to any other account within the state general fund at the end of a state fiscal year.

(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the department and shall be deposited with the treasurer of state, who shall deposit the funds in the mortgage 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

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1 under this chapter shall be deposited in the financial institutions
 2 fund established by IC 28-11-2-9. The funds in the financial
 3 institutions fund shall be available, with the approval of the budget
 4 agency, to augment and supplement the funds appropriated for the
 5 administration of this chapter.

6 SECTION 3. [EFFECTIVE UPON PASSAGE] (a) As used in this
 7 SECTION, "commissioner" refers to the securities commissioner
 8 appointed under IC 23-2-1-15(a).

9 (b) As used in this SECTION, "department" refers to the
 10 department of financial institutions established by IC 28-11-1-1.

11 (c) As used in this SECTION, "mortgage broker" has the
 12 meaning set forth in IC 28-1-29.5-8, as added by this act.

13 (d) Notwithstanding IC 28-1-29.5, as added by this act, the
 14 following expire January 1, 2008:

15 (1) A license issued by the commissioner before July 1, 2007,
 16 to a person who is a mortgage broker.

17 (2) Any certificate of registration issued in connection with a
 18 license described in subdivision (1).

19 (e) If the holder of a license that expires under subsection (d)
 20 applies to the department, before July 1, 2008, for an initial license
 21 under IC 28-1-29.5-18, as added by this act, the department shall
 22 apply toward the initial license application fee required under
 23 IC 28-1-29.5-18(b)(3), as added by this act, an amount equal to the
 24 product of:

25 (1) the license application fee paid by the licensee under
 26 IC 23-2-5-5(a)(3) before July 1, 2007; multiplied by

27 (2) a fraction, the numerator of which is the number of days
 28 that would have remained, after December 31, 2007, under
 29 the term of the license issued by the commissioner under
 30 IC 23-2-5 if not for subsection (d), and the denominator of
 31 which is seven hundred thirty (730).

32 The department may request the treasurer of state to transfer the
 33 amount calculated under this subsection from the loan broker
 34 regulation account created by IC 23-2-5-7 to the mortgage broker
 35 regulation account created by IC 28-1-29.5-46, as added by this act,
 36 for the department's use in administering IC 28-1-29.5, as added
 37 by this act.

38 (f) This SECTION expires January 1, 2009.

39 SECTION 4. [EFFECTIVE UPON PASSAGE] (a) As used in this
 40 SECTION, "department" refers to the department of financial
 41 institutions established by IC 28-11-1-1.

42 (b) Notwithstanding IC 28-1-29.5-37(1), as added by this act, the

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1 department shall adopt any rules to implement IC 28-1-29.5, as
2 added by this act, in the same manner as emergency rules are
3 adopted under IC 4-22-2-37.1. Except for rules needed to
4 implement:
5 (1) IC 28-1-29.5-19, as added by this act;
6 (2) IC 28-1-29.5-20, as added by this act; or
7 (3) IC 28-1-29.5-24, as added by this act;
8 any rules adopted under this SECTION must be adopted not later
9 than June 1, 2007.
10 (c) A rule adopted under this SECTION expires on the earlier
11 of:
12 (1) the date the rule is adopted by the department under
13 IC 4-22-2-24 through IC 4-22-2-36 to implement IC 28-1-29.5,
14 as added by this act; or
15 (2) January 1, 2009.
16 (d) This SECTION expires June 30, 2009.
17 SECTION 5. An emergency is declared for this act.

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