January 30, 2007

SENATE BILL No. 559

DIGEST OF SB 559 (Updated January 25, 2007 11:22 am - DI cl)

Citations Affected: IC 4-21.5; IC 5-11; IC 5-22; IC 24-4.5; IC 24-5; IC 24-7; IC 26-2; IC 28-1; IC 28-2; IC 28-5; IC 28-6.1; IC 28-7; IC 28-8; IC 28-10; IC 28-11; IC 28-12; IC 28-13; IC 28-15.

Synopsis: Various financial institutions matters. Makes various changes to the laws concerning: (1) financial institutions; and (2) persons licensed under the Uniform Consumer Credit Code.

Effective: Upon passage; January 1, 2007 (retroactive); July 1, 2007.

Paul

January 23, 2007, read first time and referred to Committee on Rules and Legislative Procedure.
January 29, 2007, amended; reassigned to Committee on Insurance and Financial Institutions.

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January 30, 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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SENATE BILL No. 559

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:

SECTION 1. IC 4-21.5-3-7, AS AMENDED BY P.L.222-2005, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) To qualify for review of a personnel action to which IC 4-15-2 applies, a person must comply with IC 4-15-2-35 or IC 4-15-2-35.5. To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

(1) States facts demonstrating that:

(A) the petitioner is a person to whom the order is specifically directed;

(B) the petitioner is aggrieved or adversely affected by the order; or

(C) the petitioner is entitled to review under any law.

(2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:

(A) the specific findings, action, or determination of the office

of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;

(B) the reason the provider believes that the finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and

(C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.

Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

(3) Is filed:

(A) ~~if~~ **with respect to** an order described in section 4, 5, 6(a)(1), ~~or~~ 6(a)(2), **or 6(a)(5)** of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order or any longer period set by statute; or

(B) ~~if~~ **with respect to** a determination described in section 6(a)(3) or 6(a)(4) of this chapter, with the office of Medicaid policy and planning not more than one hundred eighty (180) days after the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by the office of Medicaid policy and planning does not extend the time within which a hospital must file a petition for review from the original notice of program reimbursement under clause (B), except for matters that are the subject of the amended notice of program reimbursement.

If the petition for review is denied, the petition shall be treated as a petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a) and the petitioner is not allowed to intervene as a party in a proceeding resulting from the grant of the petition for review of another person, the agency shall serve a written notice on the petitioner that includes the following:

(1) A statement that the petition for review is denied.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the denial under

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subsection (c).

(c) An agency shall assign an administrative law judge to conduct a preliminary hearing on the issue of whether a person is qualified under subsection (a) to obtain review of an order when a person requests reconsideration of the denial of review in a writing that:

(1) states facts demonstrating that the person filed a petition for review of an order described in section 4, 5, or 6 of this chapter;

(2) states facts demonstrating that the person was denied review without an evidentiary hearing; and

(3) is filed with the ultimate authority for the agency denying the review within fifteen (15) days after the notice required by subsection (b) was served on the petitioner.

Notice of the preliminary hearing shall be given to the parties, each person who has a pending petition for intervention in the proceeding, and any other person described by section 5(d) of this chapter. The resulting order must be served on the persons to whom notice of the preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and the agency shall assign the matter to an administrative law judge or certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

SECTION 2. IC 5-11-1-9, AS AMENDED BY P.L.4-2005, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, shall examine all accounts and all financial affairs of every public office and officer, state office, state institution, and entity.

(b) An examination of an entity deriving:

(1) less than fifty percent (50%); or

(2) at least fifty percent (50%) but less than one hundred thousand dollars ($100,000) if the entity is organized as a not-for-profit corporation;

of its disbursements during the period of time subject to an examination from appropriations, public funds, taxes, and other sources of public expense shall be limited to matters relevant to the use of the public money received by the entity.

(c) The examination of an entity described in subsection (b) may be

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waived or deferred by the state examiner if the state examiner determines in writing that all disbursements of public money during the period subject to examination were made for the purposes for which the money was received. However, the:

(1) Indiana economic development corporation created by IC 5-28-3 and the corporation's funds, accounts, and financial affairs; **and**

(2) department of financial institutions established by IC 28-11-1-1 and the department's funds, accounts, and financial affairs;

shall be examined biennially by the state board of accounts.

(d) On every examination under this section, inquiry shall be made as to the following:

(1) The financial condition and resources of each municipality, office, institution, or entity.

(2) Whether the laws of the state and the uniform compliance guidelines of the state board of accounts established under section 24 of this chapter have been complied with.

(3) The methods and accuracy of the accounts and reports of the person examined.

The examinations shall be made without notice.

(e) If during an examination of a state office under this chapter the examiner encounters an inefficiency in the operation of the state office, the examiner may comment on the inefficiency in the examiner's report.

(f) The state examiner, deputy examiners, any field examiner, or any private examiner, when engaged in making any examination or when engaged in any official duty devolved upon them by the state examiner, is entitled to do the following:

(1) Enter into any state, county, city, township, or other public office in this state, or any entity, agency, or instrumentality, and examine any books, papers, documents, or electronically stored information for the purpose of making an examination.

(2) Have access, in the presence of the custodian or the custodian's deputy, to the cash drawers and cash in the custody of the officer.

(3) During business hours, examine the public accounts in any depository that has public funds in its custody pursuant to the laws of this state.

(g) The state examiner, deputy examiner, or any field examiner, when engaged in making any examination authorized by law, may issue subpoenas for witnesses to appear before the examiner in person or to produce books, papers, or other records (including records stored in

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electronic data processing systems) for inspection and examination. The state examiner, deputy examiner, and any field examiner may administer oaths and examine witnesses under oath orally or by interrogatories concerning the matters under investigation and examination. Under the authority of the state examiner, the oral examinations may be transcribed with the reasonable expense paid by the examined person in the same manner as the compensation of the field examiner is paid. The subpoenas shall be served by any person authorized to serve civil process from any court in this state. If a witness duly subpoenaed refuses to attend, refuses to produce information required in the subpoena, or attends and refuses to be sworn or affirmed, or to testify when called upon to do so, the examiner may apply to the circuit court having jurisdiction of the witness for the enforcement of attendance and answers to questions as provided by the law governing the taking of depositions.

SECTION 3. IC 5-22-1-2, AS AMENDED BY P.L.184-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. Except as provided in this article, this article does not apply to the following:

(1) The commission for higher education.

(2) A state educational institution. However, IC 5-22-15 applies to a state educational institution.

(3) Military officers and military and armory boards of the state.

(4) An entity established by the general assembly as a body corporate and politic. However, IC 5-22-15 applies to a body corporate and politic.

(5) A local hospital authority under IC 5-1-4.

(6) A municipally owned utility under IC 8-1-11.1 or IC 8-1.5.

(7) Hospitals established and operated under IC 16-22-1 through IC 16-22-5, IC 16-22-8, IC 16-23-1, or IC 16-24-1.

(8) A library board under IC 36-12-3-16(b).

(9) A local housing authority under IC 36-7-18.

(10) Tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(11) A person paying for a purchase or lease with funds other than public funds.

(12) A person that has entered into an agreement with a governmental body under IC 5-23.

(13) A municipality for the operation of municipal facilities used for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

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(14) The department of financial institutions established by IC 28-11-1-1.

SECTION 4. IC 24-4.5-1-102, AS AMENDED BY P.L.57-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 102. Purposes; Rules of Construction—(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

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

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

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

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

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

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

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

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

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

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2005.~~ **2006.**

SECTION 5. IC 24-4.5-1-201, AS AMENDED BY P.L.57-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 201. (1) Except as otherwise provided in this section, this article applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations and deferrals, made in this state, of sales, leases, and loans, wherever made. For purposes of this article, **the following apply:**

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

(b) A lease or modification of a lease agreement is made in this

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state if the lessee's agreement or offer to lease or to modify is received by the lessor or a person acting on behalf of the lessor in this state. ~~and~~

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

(d) A sale, lease, or loan transaction occurs in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction with a creditor in another state and the creditor has advertised or solicited sales, leases, or loans in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means.

For purposes of subdivisions (a) through (c), an offer is received by a creditor in Indiana if the offer is physically delivered, or otherwise transmitted or communicated, to a person who has actual or apparent authority to act for the creditor in Indiana, regardless of whether approval, acceptance, or ratification by any other agent or representative of the creditor in another state is necessary to give legal consequence to the consumer credit transaction.

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

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

~~(4)~~ **(2)** IC 24-4.5-5-101 through IC 24-4.5-5-108 apply to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

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

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

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

~~(6)~~ **(3)** Except as provided in subsection ~~(4),~~ **(2),** a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

~~(7)~~ **(4)** For the purposes of this article, the residence of a buyer, lessee, or debtor is the address given by the buyer, lessee, or debtor as the buyer's, lessee's, or debtor's residence in any writing ~~signed~~ **or electronic communication made** by the buyer, lessee, or debtor in connection with a credit transaction. Until the buyer, lessee, or debtor notifies the creditor of a new or different address, the given address is presumed to be unchanged.

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

~~(a) a seller, a lessor, a lender or an assignee of the seller's, lessor's, or lender's rights may not contract for or receive charges in excess of those permitted by IC 24-4.5-2, IC 24-4.5-3, or IC 24-4.5-7;~~

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

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

~~(7.6) For the purpose of this section, a solicitation, relating to a consumer credit sale, consumer lease, or consumer loan, includes: (a) with respect to sales and leases, an offer by a catalog, pamphlet, flier, letter, or similar written material to sell or lease goods or to sell services if the terms for the extension of credit are contained therein and regardless of whether or not the instrument of solicitation is sent or delivered at the request of the buyer or lessee; (b) with respect to loans, an offer by pamphlet, flier, letter, or similar written material to make loans if the terms for the extension of credit are contained therein and regardless of whether or not the instrument of solicitation is sent or delivered at the request of the debtor; and (c) with respect to sales, leases, and loans, an offer by telephone to extend credit if initiated by the seller, lessor, or lender.~~

~~(8)~~ **(5)** Notwithstanding other provisions of this section:

(a) except as provided in subsection ~~(4),~~ **(2),** this article does not apply if the buyer, lessee, or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of the buyer's, lessee's, or debtor's residence applies; and

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

~~(9)~~ **(6)** Except as provided in subsection ~~(8),~~ **(5),** the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this article applies:

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

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

(c) that fixes venue.

~~(10)~~ **(7)** The following provisions of this article specify the applicable law governing certain cases:

(a) applicability (IC 24-4.5-6-102) of the provisions on powers and functions of the department; and

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

(8) If a creditor has violated the provisions of this article that apply to the authority to make consumer loans (IC 24-4.5-3-502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge, as set forth in IC 24-4.5-5-202.

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SECTION 6. IC 24-4.5-2-202 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 202. (1) In addition to the credit service charge permitted by IC 24-4.5-2-201 through IC 24-4.5-2-210, a seller may contract for and receive any of the following additional charges in connection with a consumer credit sale:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to ~~him~~ **the buyer** and if the charges are reasonable in relation to the benefits ~~are of a type which is not for credit~~ and are excluded as permissible additional charges from the credit service charge. With respect to any additional charge not specifically provided for in this section, to be a permitted charge under this subsection the seller must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the buyer. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the buyer and is reasonable in relation to the benefits.

(d) A charge not to exceed ~~twenty~~ **twenty-five** dollars ~~($20)~~ **($25)** for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(e) Annual ~~or periodic~~ participation fees assessed in connection with a revolving charge account. **Annual participation fees must:**

(i) be reasonable in amount;

(ii) bear a reasonable relationship to the seller's costs to maintain and monitor the charge account; and

(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss:

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller and stating that the buyer may choose the person, subject to the seller's reasonable approval, through whom the insurance is to be

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obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific, affirmative, written indication of the desire to do so after written disclosure of the cost.

(3) With respect to a debt secured by an interest in land, the following closing costs, if the costs are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

(a) fees for title examination, abstract of title, title insurance, property surveys, or similar purposes;

(b) fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents;

(c) notary and credit report fees;

(d) amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge; and

(e) appraisal fees.

SECTION 7. IC 24-4.5-3-202 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 202. (1) In addition to the loan finance charge permitted by IC 24-4.5-3-201 through IC 24-4.5-3-210, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Annual ~~or periodic~~ participation fees assessed in connection with a revolving loan account. **Annual participation fees must:**

(i) be reasonable in amount;

(ii) bear a reasonable relationship to the lender's costs to maintain and monitor the loan account; and

(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(d) With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

(i) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.

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(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.

(iii) Notary and credit report fees.

(iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge.

(v) Appraisal fees.

(e) Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value and if the charges are reasonable in relation to the benefits ~~are of a type which is not for credit~~ and are excluded as permissible additional charges from the loan finance charge. With respect to any other additional charge not specifically provided for in this section to be a permitted charge under this subsection, the creditor must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the debtor. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the debtor and is reasonable in relation to the benefits.

(f) A charge not to exceed ~~twenty~~ **twenty-five** dollars ~~($20)~~ **($25)** for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(g) With respect to a revolving loan account, a fee not to exceed ~~twenty~~ **twenty-five** dollars ~~($20)~~ **($25)** in each billing cycle during which the balance due under the revolving loan account exceeds by more than one hundred dollars ($100) the maximum credit limit for the account established by the lender.

(h) With respect to a revolving loan account, a transaction fee that may not exceed the lesser of the following:

(i) Two percent (2%) of the amount of the transaction.

(ii) Ten dollars ($10).

The additional charges provided for in ~~paragraphs~~ **subdivisions** (f), (g), and (h) are not subject to refund or rebate.

(2) An additional charge may be made for insurance in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

(a) with respect to insurance against loss of or damage to property or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the

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insurance if obtained from or through the lender and stating that the debtor may choose the person, subject to the lender's reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of the desire to do so after written disclosure of the cost of the insurance.

SECTION 8. IC 24-4.5-3-402 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 402. (1) **Except as provided in IC 24-9-4-3 with respect to a high cost home loan (as defined in IC 24-9-2-8),** with respect to a consumer loan, other than one pursuant to a revolving loan account or one on which only loan finance charges are payable prior to the time that the final scheduled payment is due, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original loan. This section does not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

(2) For the purposes of this section, "terms of the refinancing" means:

(a) in the case of a fixed-rate consumer loan, the individual payment amounts, the charges as a result of default by the debtor, and the rate of the loan finance charge; and

(b) in the case of a variable rate consumer loan, the method used to determine the individual payment amounts, the charges as a result of default by the debtor, the method used to determine the rate of the loan finance charge, the circumstances under which the rate of the loan finance charge may increase, and any limitations on the increase in the rate of the loan finance charge.

(3) If a consumer loan is made in compliance with the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3802 et seq.), the note evidencing the mortgage must contain a reference to the applicable federal law.

SECTION 9. IC 24-4.5-3-503, AS AMENDED BY P.L.57-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2007]: Sec. 503. License to Make Consumer Loans—(1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions.

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

(a) the time of application;

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

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

(3) Evidence of compliance with this section may include:

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

(b) credit histories; and

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

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

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

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

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

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

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

~~(d)~~ **(7)** A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee **under subsection (6)(c)** is delinquent.

~~(7)~~ **(8)** The applicant may deduct the fees required under subsection (6)(a) through (6)(c) from the filing fees paid under IC 24-4.5-6-203.

~~(8)~~ **(9)** A loan license issued under this section is not assignable or transferable.

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(10) The director may designate an automated central licensing system and repository, operated by a third party, to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this section; and

(b) performing other services that the director determines are necessary for the orderly administration of the department's licensing system.

SECTION 10. IC 24-4.5-3-504 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 504. Revocation or Suspension of License—(1) The department may issue to a person licensed to make consumer loans an order to show cause why the license should not be revoked or suspended for a period determined by the department. The order shall state the place **and time** for a ~~hearing and set a time for the hearing~~ **meeting with the department** that is no less than ten (10) days from the date of the order. After the ~~hearing,~~ **meeting,** the department shall revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated this article or any rule or order lawfully made pursuant to this article; or

(b) facts or conditions exist which would clearly have justified the department in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(2) Except as provided in section 503.5 of this chapter, no revocation or suspension of a license is lawful unless prior to institution of proceedings by the department notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a ~~hearing~~ **meeting with the licensee** upon five (5) days written notice **to the licensee,** enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to make consumer loans may

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relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect the person's liability for acts previously committed.

(6) No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

(7) The department may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the department in refusing to grant a license.

(8) If the director:

(a) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or

(b) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may proceed with the revocation of the license under IC 4-21.5-3-6.

SECTION 11. IC 24-4.5-3-505 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 505. Records; Annual Reports—(1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the department to determine whether the licensee is complying with the provisions of this article. The record keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever located. The records pertaining to any loan shall be retained for two (2) years after making the final entry relating to the loan, but in the case of a revolving loan account the two (2) years is measured from the date of each entry.

(2) Every licensee shall file with the department a composite report as required by the department, but not more frequently than annually, in the form prescribed by the department relating to all consumer loans made by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states. Information contained in the reports shall be confidential and may be published only in composite form. The department may impose a fee ~~of five dollars ($5)~~ **in an amount fixed by the department under IC 28-11-3-5** for each day that a licensee fails to file the report required by this subsection.

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(3) Every licensee shall file notification with the department if the licensee:

(a) has a change in name, address, or principals;

(b) opens a new branch, closes an existing branch, or relocates an existing branch;

(c) files for bankruptcy or reorganization; or

(d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(4) Every licensee shall file notification with the department if a key officer or director of the licensee:

(a) is under **indictment for** a felony ~~indictment related to the licensee's activities;~~ **involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;** or

(b) has been convicted of **or pleaded guilty or nolo contendere to** a felony ~~related to the licensee's activities;~~ **involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;**

not later than thirty (30) days after the date of the event described in this subsection.

SECTION 12. IC 24-4.5-4-108 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 108. Refund or Credit Required; Amount — (1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or the debtor's estate is entitled to a refund of:

(a) any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to the creditor by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor's account; **and**

(b) any portion of an additional charge that is:

(i) assessed in accordance with IC 24-4.5-2-202 or IC 24-4.5-3-202; and

(ii) subject to rebate upon prepayment.

(2) This chapter does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this chapter amount to less than one dollar ($1), and except as provided in subsection (1) does not require the creditor to account to the debtor for any portion of a separate charge for insurance because:

(a) the insurance is terminated by performance of the insurer's obligation;

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(b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(3) Except as provided in subsection (2), the creditor or the creditor's assignee shall promptly make an appropriate refund or credit to the debtor for any separate charge made for insurance if:

(a) the insurance is not provided or is provided for a term shorter than the term for which the charge to the debtor for insurance was computed; or

(b) the insurance terminates prior to the end of the scheduled term of the insurance because of prepayment in full or otherwise.

(4) A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the insurance commissioner or a formula filed by the insurer with the insurance commissioner at least thirty (30) days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is used after the insurance commissioner notifies the insurer that it is disapproved.

(5) If a refund or credit required by subsection ~~(3)~~ **(1)** is not made to the debtor within sixty (60) days after the date the ~~insurance~~ **debt** is terminated, due to prepayment in full or otherwise, the creditor shall pay to the debtor for each day after the sixty (60) day period has expired an amount equal to the daily interest at the contracted annual percentage rate on the amount of the ~~credit insurance premium~~ refund **required by subsection (1)** due at the time of prepayment or termination. **The director may impose an additional civil penalty of not greater than one thousand dollars ($1,000) per occurrence if a creditor engages in a pattern or practice of failing to comply with the subsection.**

SECTION 13. IC 24-4.5-6-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 104. (1) In addition to other powers granted by this article, the department within the limitations provided by law may:

(a) receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the department's own initiative;

(b) counsel persons and groups on their rights and duties under this article;

(c) establish programs for the education of consumers with respect to credit practices and problems;

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(d) make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public;

(e) adopt, amend, and repeal ~~substantive rules when specifically authorized by this article, and adopt, amend, and repeal procedural~~ rules, **orders, policies, and forms** to carry out the provisions of this article;

(f) maintain more than one (1) office within Indiana; and

(g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the department in court.

(2) No liability is imposed under this article for an act done or omitted in conformity with a rule, written notice, written opinion, written interpretation, or written directive of the department notwithstanding that after the act or omission the rule, written notice, written opinion, written interpretation, or written directive may be amended or repealed, or be determined by judicial or other authority to be invalid for any reason.

SECTION 14. IC 24-4.5-6-106, AS AMENDED BY P.L.57-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 106. Examinations—(1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the ~~books and~~ records of persons and may make investigations of persons as may be necessary to determine compliance. **Records subject to examination under this section include the following:**

(a) Training, operating, and policy manuals.

(b) Minutes of:

(i) management meetings; and

(ii) other meetings.

(c) Other records that the department determines are necessary to perform its investigation or examination.

The department may **also** administer oaths or affirmations, subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation. The department shall determine the sufficiency of the records **maintained** and whether the person has made the required information reasonably available. The records pertaining to any transaction subject to this article shall be retained for two (2) years after making the final entry relating to the consumer credit transaction, but in the case of a revolving loan account or revolving charge account, the two (2) years

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is measured from the date of each entry.

(2) If the department:

(a) investigates; or

(b) examines the books and records of;

a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203, the person shall pay all reasonably incurred costs of the investigation or examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5. However, the person is liable for the costs of an investigation or examination under this subsection only to the extent that the costs exceed the amount of the filing fees paid most recently under IC 24-4.5-6-203. **Any costs required to be paid under this subsection shall be paid not later than sixty (60) days after the person receives a notice from the department of the costs being assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day that the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.**

(3) The department shall be given free access to the records wherever located. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or its representative to examine them where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect them on behalf of the department.

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

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

SECTION 15. IC 24-4.5-6-113 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 113. Civil Actions by Department—(1) After demand, the department may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this article. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or

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debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this article, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the department, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the department to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The department may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this article, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this article, it may assess a civil penalty of no more than five thousand dollars ($5,000). No civil penalty pursuant to this subsection may be imposed for violations of this article occurring more than two (2) years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(3) If the department determines, after notice and opportunity for hearing, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars ($10,000) per violation.

SECTION 16. IC 24-4.5-6-201, AS AMENDED BY P.L.57-2006, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2007]: Sec. 201. (1) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 apply to a person, including a supervised financial organization, but not including a collection agency licensed under IC 25-11-1, engaged in Indiana in any of the following:

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

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

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

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

(e) Selling insurance or other benefits, the charges for which are approved by the department as additional charges under IC 24-4.5-2-202 or IC 24-4.5-3-202.

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

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

(a) are issued by a lender;

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

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

SECTION 17. IC 24-4.5-6-202 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 202. (1) Persons, **other than applicants for a license under IC 24-4.5-3-502(3), that are** subject to IC 24-4.5-6-201, this section, and IC 24-4.5-6-203 shall file notification with the department within thirty (30) days after commencing business in ~~this state,~~ **Indiana** and thereafter on ~~or before January 31 of each year~~ **an annual basis, on the date set forth in subsection (2).** The notification shall state **the:**

(a) name of the person;

(b) name in which business is transacted if different from subdivision (a);

(c) address of principal office, which may be outside ~~this state,~~ **Indiana;** and

(d) address of all offices or retail stores, if any, in ~~this state~~

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Indiana at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within ~~this state~~ **Indiana** at which business is transacted.

~~(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following~~

(2) A person required to be licensed under this article shall file the notification required by subsection (1) not later than December 31 of each year. All other persons subject to this section shall file the notification required by subsection (1) not later than January 31 **of each year.**

(3) Persons subject to IC 24-4.5-6-201, IC 24-4.5-6-203, and this section shall notify the department not later than thirty (30) days after the person:

(a) has a change in name, address, or principals;

(b) opens a new branch, closes an existing branch, or relocates an existing branch;

(c) files for bankruptcy or reorganization;

(d) is notified that the person is subject to revocation or suspension proceedings by a state or governmental authority with regard to the person's activities;

(e) is under **indictment for** a felony ~~indictment related to the person's activities,~~ **involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;** or

(f) has been convicted of **or pleaded guilty or nolo contendere to** a felony ~~related to the person's activities.~~ **involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.**

SECTION 18. IC 24-4.5-6-203 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 203. (1) Persons required to file notification who are sellers, lessors, or lenders shall pay a fee **in an amount and at intervals** to be prescribed by the ~~department.~~ **director under IC 28-11-3-5.** The fee shall be a uniform amount for each one hundred thousand dollars ($100,000), or part thereof, in excess of one hundred thousand dollars ($100,000), of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in ~~this state within the preceding calendar year~~ **Indiana** and held either by the seller, lessor, or lender for more than thirty (30) days after the inception of the sale, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an

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increase in the amount of an obligation is a new sale, lease, or loan to the extent of the increase. In prescribing the fee, the department shall consider the costs and expense incurred or estimated to be incurred by the department in the administration of this article, including, but not limited to, the supervision, regulation, and examination of persons subject to the provisions of the article.

(2) Persons required to file notification who are assignees shall pay a fee as prescribed and fixed by the department under subsection (1) on the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in ~~this state~~ **Indiana** taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

(3) Persons required to file notification who are assignors shall pay a fee as prescribed by the department under subsection (1) on the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in Indiana during the preceding calendar year unless the assignee has already paid the fees.

(4) Persons required to renew a license ~~by~~ **under** IC 24-4.5-3-503 may deduct the fees paid under ~~IC 24-4.5-3-503(4)(a)~~ **IC 24-4.5-3-503(6)(a)** through ~~IC 24-4.5-3-503(4)(c)~~ **IC 24-4.5-3-503(6)(c)** from fees paid under this section.

(5) A person that is required to file notification under IC 24-4.5-6-202 shall pay a fee at the same rate as prescribed and fixed by the department under subsection (1) on the **original** unpaid balances of all closed end credit obligations originating from the person's place of business during the ~~calendar year~~ **time** preceding the notification **as specified under subsection (1),** unless the fees for the obligations have been paid by another person.

SECTION 19. IC 24-4.5-6-204 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 204. **IC 24-4.5-3-502,** IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203 are not applicable to ~~payment for~~ services performed by attorneys.

SECTION 20. IC 24-4.5-7-102, AS AMENDED BY P.L.57-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 102. (1) Except as otherwise provided, all provisions of this article applying to consumer loans apply to small loans, as defined in this chapter.

(2) This chapter applies to:

(a) a lender or to any person who facilitates, enables, or acts as a conduit for any person who is or may be exempt from licensing

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under IC 24-4.5-3-502;

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

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

(i) in substance a disguised loan; or

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

(3) A loan that:

(a) does not qualify as a small loan under IC 24-4.5-7-104;

(b) is for a term shorter than that specified in IC 24-4.5-7-401(1); or

(c) is made in violation of IC 24-4.5-7-402;

is subject to this article. The department may conform the finance charge for a loan described in this subsection to the limitations set forth in IC 24-4.5-3-508.

SECTION 21. IC 24-4.5-7-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 104. **(1)** "Small loan" means a loan:

(a) with a principal loan amount that is at least fifty dollars ($50) and not more than five hundred dollars ($500); and

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

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

(ii) exercises the authorization to debit the borrower's account.

(2) The amount of five hundred dollars ($500) in subsection (1)(a) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.

SECTION 22. IC 24-4.5-7-201, AS AMENDED BY P.L.141-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 201. (1) Finance charges on the first two hundred fifty dollars ($250) of a small loan are limited to fifteen percent (15%) of the principal.

(2) Finance charges on the amount of a small loan greater than two hundred fifty dollars ($250) and less than or equal to four hundred dollars ($400) are limited to thirteen percent (13%) of the amount over two hundred fifty dollars ($250) and less than or equal to four hundred

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dollars ($400).

(3) Finance charges on the amount of the small loan greater than four hundred dollars ($400) and less than or equal to five hundred dollars ($500) are limited to ten percent (10%) of the amount over four hundred dollars ($400) and less than or equal to five hundred dollars ($500).

(4) The amount of five hundred dollars ($500) in subsection (3) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.

SECTION 23. IC 24-4.5-7-202 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 202. (1) Notwithstanding any other law, the only fee that may be contracted for and received by the lender on a small loan is a charge, not to exceed ~~twenty~~ **twenty-five** dollars ~~($20),~~ **($25),** for each:

(a) return by a bank or other depository institution of a:

(i) dishonored check;

(ii) negotiable order of withdrawal; or

(iii) share draft issued by the borrower; or

(b) time an authorization to debit the borrower's account is dishonored.

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

(2) A lender may:

(a) present a borrower's check for payment; or

(b) exercise a borrower's authorization to debit the borrower's account;

not more than three (3) times.

(3) A lender shall credit a borrower's payment on a loan under this chapter in accordance with IC 24-4.5-3-408.

SECTION 24. IC 24-4.5-7-401, AS AMENDED BY P.L.57-2006, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 401. (1) A small loan may not be made for a term of less than fourteen (14) days.

(2) ~~After the borrower's fifth~~ **If three (3)** consecutive small ~~loan~~ **loans have been made to a borrower after the borrower's initial small loan,** another small loan may not be made to that borrower within seven (7) days after the ~~fifth~~ **third** consecutive small loan is paid in full. After the borrower's ~~fifth~~ **third** consecutive small loan **following the borrower's initial small loan,** the balance must be paid

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in full. ~~However,~~

(3) The borrower ~~and lender may agree~~ **has the option** to enter into a simple interest loan, payable in installments, under IC 24-4.5-3 within seven (7) days after the due date of the ~~fifth~~ **third** consecutive small loan. **When the borrower enters into the third consecutive small loan, the lender shall provide written notice, as prescribed by the director, informing the borrower of the option to enter into a simple interest loan. If the borrower exercises the option to enter into a simple interest loan, the issuing lender, or any other lender, may not make another small loan to the borrower until the simple interest loan is paid in full.**

SECTION 25. IC 24-4.5-7-402 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 402. (1) A lender is prohibited from making a small loan to a borrower if the total **of:**

(a) the ~~payable~~ **principal** amount **and finance charges** of the small loan **to be issued; plus**

(b) any other small loan balances that the borrower has outstanding with any lender;

exceeds fifteen percent (15%) of the borrower's monthly gross income.

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

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

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

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

(a) inform the lender that the borrower wants to rescind the small loan; and

(b) return the cash amount of the principal of the small loan to the lender.

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

SECTION 26. IC 24-4.5-7-404, AS AMENDED BY P.L.57-2006, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2007]: Sec. 404. (1) As used in this section, "commercially reasonable method of verification" means one (1) or more private consumer credit reporting services that the department determines to be capable of providing a lender with adequate verification information necessary to ensure compliance with subsection (4).

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

(3) A lender shall not make a small loan that, when combined with **the outstanding balance on** another outstanding small loan owed to another lender, exceeds a total of five hundred dollars ($500), ~~when the face amounts of the checks written or debits authorized in connection with each loan are combined into a single sum.~~ **excluding finance charges.** A lender shall not make a small loan to a borrower who has two (2) or more small loans outstanding, regardless of the total value of the small loans. **The amount of five hundred dollars ($500) in this subsection is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.**

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

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

(b) available third party databases **provided by private consumer reporting services.**

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

(a) provide reasonable notice to all lenders identifying the

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commercially reasonable methods of verification that are available; and

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

(6) A lender shall cause the record of a borrower's loan to be deleted from a database described in subsection (4)(b) if the borrower presents evidence to the lender that the loan has been discharged in bankruptcy.

(7) A lender shall cause the record of a borrower's loan to be deleted from a database described in subsection (4)(b) upon:

(a) presentment of the borrower's check for payment; or

(b) exercise of the borrower's authorization to debit the borrower's account.

If a check is returned or an authorization is dishonored because of insufficient funds in the borrower's account, the lender shall reenter the record of the loan in the database.

(8) A lender shall update information in a database described in subsection (4)(b) to reflect partial payments made on an outstanding loan, the record of which is maintained in the database.

(9) If a lender ceases doing business in Indiana, the director may require one (1) or more operators of databases described in subsection (4)(b) to remove records of the lender's loans from the operator's database.

(10) The director may impose a civil penalty not to exceed one hundred dollars ($100) for each violation of:

(a) this section; or

(b) any rule or policy adopted by the director to implement this section.

~~(6)~~ **(11)** The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for purposes of the provisions concerning effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions concerning civil actions by the department (IC 24-4.5-6-113).

SECTION 27. IC 24-5-15-2, AS AMENDED BY P.L.171-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) As used in this chapter, "credit services organization" means a person that, with respect to the extension of credit by another person, sells, provides, performs, or represents that the person can or will sell, provide, or perform, in return for the

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payment of money or other valuable consideration, any of the following services:

(1) Improving a buyer's credit record, credit history, or credit rating.

~~(2) Obtaining an extension of credit for a buyer.~~

~~(3)~~ **(2)** Obtaining a delay or forbearance of a buyer's obligation under a mortgage.

(3) Obtaining an extension of credit for a buyer in connection with providing a service described in subdivision (1) or (2).

(4) Providing advice or assistance to a buyer concerning the services described in subdivision (1), (2), or (3).

(b) The term "credit services organization" does not include any of the following:

(1) A person **that is:**

(A) authorized to make loans or extensions of credit under state or federal laws ~~that is~~ **and** subject to regulation and supervision under state or federal laws; or

(B) a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the federal National Housing Act (12 U.S.C. 1701 et seq.).

(2) A bank or savings association or a subsidiary of a bank or savings association that has deposits or accounts that are eligible for insurance by the Federal Deposit Insurance Corporation.

(3) A credit union doing business in Indiana.

(4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(5) A person licensed as a real estate broker under IC 25-34.1 if the person is acting within the course and scope of the person's license.

(6) A person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.

(7) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of the broker-dealer's regulation.

(8) A consumer reporting agency (as defined in the Federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)).

SECTION 28. IC 24-7-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. Rental purchase agreements involving:

(1) motor vehicles (as defined in IC 9-13-2-105(a)); **or**

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(2) other titled property;

are prohibited under this article.

SECTION 29. IC 24-7-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. **(a)** "Rental purchase agreement" means an agreement between a lessor and a lessee that:

(1) provides for the use of personal property by an individual primarily for personal, family, or household purposes;

(2) has an initial period of four (4) months or less;

(3) is automatically renewable with each rental payment; and

(4) permits the lessee to become the owner of the property.

(b) The term includes:

(1) an agreement; or

(2) a transaction;

that the director determines to be a rental purchase agreement, despite efforts by a person to structure the transaction in a manner that the director determines is being used to avoid application of this article.

SECTION 30. IC 24-7-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) The parties may contract for late charges or delinquency fees as follows:

(1) For rental purchase agreements with monthly renewal dates, a late charge not exceeding ~~five~~ **eight** dollars ~~($5)~~ **($8)** may be assessed on any rental payment not made within five (5) days after:

(A) the renewal date for the agreement; or

(B) the return of the property is required under the rental purchase agreement.

(2) For rental purchase agreements with weekly or biweekly renewal dates, a late charge not exceeding the amount specified in subsection (e) may be assessed on any rental payments not made within ~~three (3)~~ **two (2)** days after:

(A) the renewal date for the agreement; or

(B) the return of the property is required under the rental purchase agreement.

(b) A late charge on a rental purchase agreement may be collected only once on any accrued rental payment, no matter how long it remains unpaid.

(c) A late charge may be collected at any time after it accrues.

(d) A late charge may not be assessed against a rental payment that is timely made, even though an earlier late charge has not been paid in full.

(e) The amount that may be assessed under subsection (a)(2) is as

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follows:

(1) ~~One dollar ($1)~~ **Three dollars ($3)** for any payment not greater than ~~nine dollars and fifty cents ($9.50).~~ **twenty dollars ($20).**

~~(2) Two dollars ($2) for any payment greater than nine dollars and fifty cents ($9.50) but not greater than nineteen dollars and fifty cents ($19.50).~~

~~(3) Three~~ **(2) Five** dollars ~~($3)~~ **($5)** for any payment greater than ~~nineteen dollars and fifty cents ($19.50).~~ **twenty dollars ($20).**

SECTION 31. IC 24-7-5-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5.5. A lessor may contract for and receive a charge not to exceed twenty dollars ($20) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the lessee.**

SECTION 32. IC 26-2-7-2, AS AMENDED BY P.L.57-2006, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. **(a)** As used in this chapter, "financial institution" refers to a financial institution (as defined in IC 28-1-1-3). ~~that accepts deposits.~~

(b) The term does not include a person licensed under IC 24-4.5.

SECTION 33. IC 28-1-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. Unless a different meaning is required by the context, the following definitions apply throughout this article:

(1) "Financial institution" means any bank, trust company, corporate fiduciary, savings association, credit union, savings bank, bank of discount and deposit, or industrial loan and investment company organized or reorganized under the laws of this state, and includes a consumer finance institution licensed to make supervised or regulated loans under IC 24-4.5.

(2) "Bank" or "bank or trust company" means a financial institution organized or reorganized as a bank, bank of discount and deposit, or trust company under the laws of this state with the express power to receive and accept deposits of money subject to withdrawal by check, and possessing such other rights and powers granted by the provisions of this article in express terms or by implication. The term "bank" or "bank or trust company" does not include a savings association, credit union, or industrial loan and investment company.

(3) "Domestic corporation" means a corporation formed under the laws of this state, and "foreign corporation" means every other

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corporation.

(4) "Articles of incorporation" includes both the original articles of incorporation and any and all amendments thereto, except where the original articles of incorporation only are expressly referred to, and includes articles of merger and consolidation, and, in the case of corporations organized before July 1, 1933, articles of reorganization, and all amendments thereto.

(5) "Incorporator" means one (1) of the signers of the original articles of incorporation.

(6) "Subscriber" means one who subscribes for shares of stock in a financial institution.

(7) "Shareholder" means one who is a holder of record of shares of stock in a financial institution.

(8) "Capital stock" means the aggregate amount of the par value of all shares of capital stock.

(9) "Capital" means the aggregate amount paid in on the shares of capital stock of a financial institution issued and outstanding.

~~(10) "Sound capital" means and includes the paid-in and unimpaired capital, the unimpaired surplus, and the unimpaired proceeds of the notes and debentures of any bank which have been issued under the authority and with the approval, in writing, of the department.~~

(10) "Capital and surplus" or "unimpaired capital and unimpaired surplus" has the meaning set forth in 12 CFR 32.2.

(11) "Assets" includes all of the property and rights of every kind of a financial institution, and the term "fixed assets" means such assets as are not intended to be sold or disposed of in the ordinary course of business.

(12) "Principal office" means that office maintained by the financial institution in this state, the address of which is required by the provisions of this article to be kept on file in the office of the secretary of state.

(13) "Subscription" means any written agreement or undertaking, accepted by a financial institution, for the purchase of shares of capital stock in the financial institution.

(14) "Department" means the department of financial institutions.

(15) "Member" means a member of the department of financial institutions.

(16) "Branch" means any office, agency, or other place of business, other than the principal office of a financial institution, at which deposits are received, checks paid, or money lent.

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(17) "Subsidiary" means any foreign or domestic corporation or limited liability company in which the parent bank, savings bank, savings association, or industrial loan and investment company had at least eighty percent (80%) ownership before July 1, 1999, or is formed or acquired in accordance with IC 28-13-16 after June 30, 1999.

(18) "Savings bank" means a financial institution that:

(A) was organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993;

(B) is formed as the result of a conversion under:

(i) IC 28-1-21.7;

(ii) IC 28-1-21.8;

(iii) IC 28-1-21.9; or

(iv) IC 28-1-30; or

(C) is incorporated under IC 28-12.

(19) "Corporate fiduciary" means a financial institution whose primary business purpose is to engage in the trust business (as defined in IC 28-14-1-8) and the execution and administration of fiduciary accounts as a nondepository trust company incorporated under Indiana law.

SECTION 34. IC 28-1-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 23. (a) A corporation or an individual acting directly, indirectly, or through or in concert with one (1) or more other corporations or individuals may not acquire control of any bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company unless the department has received an application for change in control by which the department is given one hundred twenty (120) days prior written notice of the proposed change in control and within that time the department has issued a notice approving the proposed change in control. The application shall contain the name and address of the corporation, individual, or individuals who propose to acquire control.

(b) The period for approval under subsection (a) may be extended:

(1) in the discretion of the director for an additional thirty (30) days; and

(2) not to exceed two (2) additional times for not more than forty-five (45) days each time if:

(A) the department determines that the corporation, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (c);

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(B) the department determines that any material information submitted is substantially inaccurate; or

(C) the department has been unable to complete the investigation of the corporation, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the corporation, individual, or individuals.

(c) The department shall issue a notice approving the application only after it has become satisfied that both of the following apply:

(1) The corporation, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company in a legal and proper manner.

(2) The interests of the stockholders, depositors, and creditors of the bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company and the interests of the public generally will not be jeopardized by the proposed change in control.

(d) As used in this section, "holding company" means any company (as defined in IC 28-2-15-5 before July 1, 1992, and as defined in IC 28-2-16-5 beginning July 1, 1992) that directly or indirectly controls one (1) or more state chartered financial institutions.

(e) As used in this section, "control", **"controlling", "controlled by", or "under common control with"** means **possession of** the power directly or indirectly to:

(1) direct **or cause the direction of** the management or policies of a bank, a trust company, a holding company, a corporate fiduciary, or an industrial loan and investment company, **whether through the beneficial ownership of voting securities, by contract, or otherwise;** or

(2) vote at least twenty-five percent (25%) of any class of voting securities of a bank, a trust company, a holding company, a corporate fiduciary, or an industrial loan and investment company, **whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.**

(f) Subsection (a) does not apply to any transaction in which the director determines that the relative direct or beneficial ownership of the bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company

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does not change.

~~(f)~~ **(g)** The president or other chief executive officer of a financial institution or holding company shall report to the director of the department any transfer or sale of shares of stock of the financial institution or holding company that results in direct or indirect ownership by a stockholder or an affiliated group of stockholders of at least ten percent (10%) of the outstanding stock of the financial institution or holding company. The report required by this section must be made not later than ten (10) days after the transfer of the shares of stock on the books of the financial institution or holding company.

SECTION 35. IC 28-1-7.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The bank, trust company, corporate fiduciary, or stock savings bank and the holding company shall file with the department three (3) copies of the plan of exchange certified by an officer of each as having been approved in accordance with section 3 of this chapter. They shall also file a statement which includes:

(1) information as to the earnings and financial condition of the bank, trust company, corporate fiduciary, or stock savings bank as of the end of its last preceding year as filed with the department, and similar information, to the extent readily available, as of a date not earlier than one hundred twenty (120) days before the filing of the plan of exchange;

(2) a balance sheet of the holding company as of the date of the most recent statement of condition of the bank, trust company, corporate fiduciary, or stock savings bank required by subdivision (1);

(3) a pro forma balance sheet of the holding company based on the assumption that the plan of exchange was effective as proposed at the date of the balance sheet of the holding company required by subdivision (2);

(4) a description of the business intended to be done by the holding company and of any plans or proposals that the holding company may have to sell its assets or merge or consolidate with any other person, or to make any other material change in its investment policy, business, corporate structures, or management;

(5) a list of all persons who are or who have been selected to become directors or officers of the holding company, a description of their principal occupations, a list of all offices and positions held by them during the past five (5) years, and information about ~~any convictions of those persons for crimes other than minor traffic violations during the last ten (10) years;~~

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whether any of them:

(A) is under indictment for;

(B) has been convicted of; or

(C) has pleaded guilty or nolo contendere to:

a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(6) a description of any plans or proposals that the holding company may have to liquidate the bank, trust company, corporate fiduciary, or stock savings bank to sell its assets or merge or consolidate it with any person, or to make any other material change in its investment policy, business, corporate structure, or management;

(7) a copy of a preliminary proxy or information statement prepared for distribution to the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank setting forth all material facts relating to the holding company and the proposed plan of exchange; and

(8) such other information as the director may prescribe.

(b) The statement must:

(1) assert the completeness and accuracy of the information referred to in subsection (a)(1) through (a)(8); and

(2) be made under oath or affirmation by an officer of the bank, trust company, corporate fiduciary, or stock savings bank and an officer of the holding company.

If any material change occurs in the facts set forth in the statement filed with the department, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the department within five (5) business days after the parties learn of the change.

SECTION 36. IC 28-1-7.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) If a plan of exchange is approved by the department, the plan shall be submitted to a vote of the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank and, if the articles of incorporation of the holding company are to be amended in the plan, to a vote of the shareholders of the holding company, at the meeting or meetings of the shareholders directed by the resolutions of the board of directors of the corporation approving the plan of exchange. Each shareholder of the bank, trust company, corporate fiduciary, or stock savings bank shall be provided with a copy of a proxy or information statement setting forth material facts regarding the holding company and the plan of exchange at the same time as the shareholder is provided with the

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notice of the meeting. Three (3) copies of the definitive proxy or information statement, one (1) of which shall be marked to indicate the changes from the preliminary statement filed under section 4 of this chapter, shall be filed with the department by the bank, trust company, corporate fiduciary, or stock savings bank not later than the date the statement is first sent, given, or delivered to shareholders.

(b) Each outstanding share of the bank, trust company, corporate fiduciary, or stock savings bank and, if the articles of incorporation of the holding company are to be amended in the plan, the holding company, is entitled to one (1) vote, regardless of class, on the approval of the plan of exchange unless the articles of incorporation in effect at the time of the vote provide for special, conditional, or limited voting rights, or for no right to vote. The holders of the outstanding shares of a class of the bank, trust company, corporate fiduciary, or stock savings bank and, if the articles of incorporation of the holding company are to be amended in the plan, the holding company are entitled to vote as a separate class on a proposed plan of exchange if the plan would:

(1) increase or decrease the aggregate number of authorized shares of the class;

(2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(5) change the shares of all or part of the class into a different number of shares of the same class;

(6) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(8) limit or deny an existing preemptive right of all or part of the shares of the class; or

(9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

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~~(b)~~ **(c)** The plan of exchange is approved by the shareholders of a corporation when affirmative votes representing at least a majority (or such greater portion as the articles of incorporation may require) of the outstanding shares are received from shareholders entitled to vote on the plan. Notwithstanding shareholder adoption of the plan of exchange and at any time before the filing of articles of exchange with the secretary of state under section 9 of this chapter, the plan of exchange may be abandoned by a resolution of the board of directors of the bank, trust company, corporate fiduciary, or stock savings bank or of the holding company.

SECTION 37. IC 28-1-11-3.1, AS AMENDED BY P.L.57-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.1. (a) Any bank or trust company shall have the power to discount, negotiate, sell and guarantee promissory notes, bonds, drafts, acceptances, bills of exchange, and other evidences of debt; to buy and sell, exchange, coin and bullion; to loan money; to borrow money and to issue its notes, bonds, or debentures to evidence any such borrowing and to mortgage, pledge, or hypothecate any of its assets to secure the repayment thereof; to receive savings deposits and deposits of money subject to check, and deposits of securities or other personal property from any person or corporation, upon such terms as may be agreed upon by the parties; to contract for and receive on loans and discounts the highest rate of interest allowed by the laws of this state to be contracted for and received by individuals; to accept, for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, however, the letter of credit must state a specific expiration date; and to exercise all the powers incidental and proper or which may be necessary and usual in carrying on a general banking business, but it shall have no right to issue bills to circulate as money.

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

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

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

(3) To purchase, invest in, and dispose of notes or bonds secured

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by mortgage or trust deed insured by the federal housing administrator or debentures issued by the federal housing administrator, or bonds or other securities issued by national mortgage associations.

(4) To extend credit to any state agency, with the approval of the department, notwithstanding any other provisions or limitations of IC 28-1. No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, shall be deemed to apply to loans, advances of credit, or purchases made pursuant to subdivisions (1), (2), and (3) and this subdivision.

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

(6) To adopt stock purchase programs for employees and to grant options to purchase, and to issue and sell, shares of its capital

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stock to its employees, or to a trustee on their behalf (which may be the bank or trust company issuing such capital stock), without first offering the same to its shareholders, for such consideration, not less than par value, and upon such terms and conditions as shall be approved by its board of directors and by the holders of a majority of its shares entitled to vote with respect thereto, and by the department. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuances of such options and the sufficiency thereof shall be conclusive. Any bank or trust company exercising the powers granted in this subsection may, to the extent approved by the department, have authorized and unissued stock required to fulfill any stock option or other arrangement authorized herein.

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

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

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

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

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

Unless a written extension of time is given by the department, the bank or trust company shall open the branch or principal office within two (2) years from the acquisition date of the real estate. If the bank or trust company does not open a branch or its principal office on the real estate in that time period or if the bank or trust company removes its branch or principal office from the real estate, the bank or trust company shall divest itself of all interest in the real estate within five (5) years from the acquisition date of the real estate, if a branch was not opened, or five (5) years from the removal date of the branch office, whichever

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applies. Except with the written approval of the department, the sum invested in real estate and buildings used for the convenient transaction of its business as provided in this subdivision shall not exceed fifty percent (50%) of the ~~sound~~ capital **and surplus** of the bank or trust company as provided in section 5 of this chapter.

(9) **Except as provided in subsections (c) and (d), and subject to subsection (e),** to invest in community development corporations and projects of a predominantly civic, community, or public nature, including equity investments in corporations or limited liability companies organized for such purposes. Investments by a bank or trust company under this subdivision may not exceed:

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

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

of the capital and surplus of the bank or trust company. ~~unless the director makes the determination set forth in subsection (c).~~ As used in this subdivision and in subsection (c), "capital and surplus" has the meaning set forth in ~~IC 28-1-13-1.1.~~ **IC 28-1-1-3(10).**

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

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

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

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

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

(d) Investments by a bank or trust company under subsection (b)(9) in equity investments qualifying for the new markets tax credits under 26 U.S.C. 45D:

(1) are not subject to the limit set forth in subsection (b)(9)(A); and

(2) may exceed the limit set forth in subsection (b)(9)(B) if the director determines that:

(A) the aggregate equity investments qualifying for the new markets tax credit that are:

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(i) made by the bank or trust company under subsection (b)(9); and

(ii) in excess of five percent (5%) of the capital and surplus of the bank or trust company;

will not pose a significant risk to the affected deposit insurance fund; and

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

However, in no case shall the aggregate equity investments qualifying for the new markets tax credit and made by a bank or trust company exceed ten percent (10%) of the capital and surplus of the bank or trust company.

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

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

SECTION 38. IC 28-1-11-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

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

(2) to engage in other activities authorized for;

national banks domiciled in Indiana.

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

(1) granted to national banks; but

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

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

(c) The department shall promptly notify the requesting bank of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the bank may exercise the requested rights and privileges sixty (60) days after the date on which

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the department receives the letter unless otherwise notified by the department.

(d) The department ~~through its members,~~ may ~~prohibit the bank from exercising~~ **deny** the requested rights and privileges ~~only~~ if the ~~members find~~ **department finds** that:

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

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

(3) the exercise of the requested rights and privileges by the bank would result in an unacceptable curtailment of consumer protection; or

(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the bank.

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

(1) the ~~members~~ **department** must:

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

(B) convene a hearing;

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

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

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

(g) ~~Whenever, in compliance with this section,~~ **If** a bank ~~exercises~~ **receives approval to exercise the requested** rights and privileges granted to national banks domiciled in Indiana, **the department shall determine by order whether** all banks may exercise the same rights and privileges. ~~if~~ **In making the determination required by this subsection,** the department ~~by order determines~~ **must ensure** that the exercise of the rights and privileges by all banks ~~would~~ **will** not:

(1) adversely affect their safety and soundness; **or**

(2) unduly constrain Indiana consumer protection provisions.

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

SECTION 39. IC 28-1-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) Any bank or trust company shall have power to purchase, hold, and convey real estate for the following purposes, and for no others:

(1) Such as shall be necessary for the convenient transaction of its business.

(2) Such as shall be mortgaged to it or to its assignor immediate or remote, in good faith by way of security for debts.

(3) Such as shall be conveyed to it in satisfaction of debts contracted in the course of its dealings, or in satisfaction of debts, notes, or mortgages purchased by or assigned to it, or in exchange for real estate so conveyed to it.

(4) Such as it shall purchase at sales under judgments, decrees, or mortgages held by the bank or trust company or shall purchase to secure debts due it.

(b) Except with the approval in writing of the department, after July 1, 1933, the sum invested in real estate and buildings used for the convenient transaction of its business shall not exceed fifty percent (50%) of the ~~sound~~ capital **and surplus** of such bank or trust company. Such investment may be made in the stock of a corporation organized to own and hold the real estate and building occupied and used wholly or in part by such bank or trust company.

(c) No bank or trust company shall hold the title or possession of any real estate purchased or otherwise acquired to secure any debts due to it for a longer period than ten (10) years after such real estate is or has been purchased or otherwise acquired, or after July 1, 1933, without the consent in writing of the department.

(d) For the purposes of subsection (a)(1), real estate purchased or held for the convenient transaction of the business of a bank or trust company includes the following:

(1) Real estate on which the principal office or a branch office of the bank or trust company is located.

(2) Real estate that is the location of facilities supporting the operations of the bank or trust company, such as parking facilities, data processing centers, loan production offices, automated teller machines, night depositories, facilities necessary for the

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operations of a bank or trust company subsidiary, or other facilities that are approved by the director.

(3) Real estate that the board of directors of the bank or trust company expects, in good faith, to use as a bank or trust company office or facility in the future.

(e) If real estate referred to in subsection (d)(3) is held by a bank or trust company for one (1) year without being used as a bank or trust company office or facility, the board of directors of the bank or trust company shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the department.

(f) Real estate referred to in subsection (d)(3) may not be held by a bank or trust company for more than three (3) years without being used as a bank or trust company office or facility unless:

(1) the board of directors of the bank or trust company, by resolution:

(A) reaffirms annually that the bank or trust company expects to use the real estate as a bank or trust company office or facility in the future; and

(B) explains the reason why the real estate has not yet been used as a bank or trust company office or facility; and

(2) the director determines that:

(A) the continued holding of the real estate by the bank or trust company does not endanger the safety and soundness of the bank or trust company; and

(B) the bank or trust company is holding the real estate to use the real estate in the future for one (1) of the purposes set forth in subsection (d)(1) and (d)(2).

(g) Real estate referred to in subsection (d)(3) may not be held by a bank or trust company for more than ten (10) years without being used as a bank or trust company office or facility unless the department consents in writing to the continued holding of the real estate by the bank or trust company.

SECTION 40. IC 28-1-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. Every bank or trust company shall have power:

(1) to purchase and hold for the purpose of becoming a member of the federal reserve system:

(A) so much of the capital stock of a federal reserve bank as shall qualify it for membership, pursuant to the Federal Reserve Act (12 U.S.C. 221 et seq.); and

(B) so much of the capital stock of the Federal Deposit

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Insurance Corporation as will qualify it for membership, pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811 through 1833e);

(2) to do anything necessary or appropriate to acquire and maintain insurance of its deposits in accordance with the provisions of any federal law in force on or after July 1, 1933;

(3) to become a member of the federal reserve system; and

(4) to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member by the Federal Reserve Act. With the express approval of the department, and except as otherwise provided in this chapter, any bank or trust company shall have the power to purchase and hold shares of the capital stock, bonds, notes, debentures, or any other securities or obligations issued at any time by any agency or instrumentality of the federal government. After July 1, 1933, no bank or trust company shall purchase the capital stock of any joint stock land bank organized pursuant to 12 U.S.C. 2001 through 2279aa-14 and hold the stock so purchased in an amount in excess of ten percent (10%) of the ~~sound~~ capital **and surplus** of such bank or trust company.

SECTION 41. IC 28-1-13-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.1. As used in this chapter, "capital and surplus" or "unimpaired capital and unimpaired surplus" ~~have~~ **has** the meaning set forth in 12 CFR ~~32.~~ **32.2.**

SECTION 42. IC 28-1-22-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Any bank, savings bank, trust company, corporate fiduciary, credit union, industrial loan and investment company, or savings association **that:**

(1) is organized under the laws of:

(A) any other state (as defined in IC 28-2-17-19); ~~or~~

(B) the United States; ~~other than those~~ **or**

(C) any other country;

(2) is not domiciled in Indiana; **and**

(3) is referred to in this chapter as a corporation or foreign corporation;

shall, before transacting business in this state, obtain a certificate of admission to this state from the department, which must be filed with the secretary of state. A corporation may not do business in Indiana unless a certificate of admission is issued to the corporation by the department.

(b) The activities listed in IC 23-1-49-1(b) do not constitute transacting business within the meaning of subsection (a). For the

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purposes of this section, the list of activities set forth in IC 23-1-49-1(b) is not exhaustive.

(c) Isolated business transactions that are not regular, systematic, or continuing do not constitute the transaction of business under subsection (a).

SECTION 43. IC 28-1-29-3, AS AMENDED BY P.L.57-2006, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) No person shall operate a budget service company in ~~the state of~~ Indiana without having obtained a license from the department. **For purposes of this section, a person is operating in Indiana if:**

(1) the person or any of the person's employees or agents are located in Indiana; or

(2) the person:

(A) contracts with debtors who are residents of Indiana; or

(B) solicits business from residents of Indiana by advertisements or other communications sent or delivered through any of the following means:

(i) Mail.

(ii) Personal delivery.

(iii) Telephone.

(iv) Radio.

(v) Television.

(vi) The Internet or other electronic communications.

(vii) Any other means of communication.

(b) The director may request evidence of compliance with this section at:

(1) the time of application;

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

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

~~(b)~~ **(c)** For purposes of subsection ~~(a),~~ **(b),** evidence of compliance with this section may include:

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

(2) credit histories; and

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

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

~~(d)~~ **(e)** If a person knowingly acts as a budget service company in violation of this chapter, any agreement the person has made under this

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chapter is void and the debtor under the agreement is not obligated to pay any fees. If the debtor has paid any amounts to the person, the debtor, or the department on behalf of the debtor, may recover the payment from the person that violated this section.

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

SECTION 44. IC 28-1-29-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The department may revoke or suspend any license issued under this chapter for the following causes:

(1) **Indictment for,** conviction of, **or a plea of guilty or nolo contendere to** a felony ~~or of a misdemeanor~~ involving ~~moral turpitude.~~ **fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.**

(2) Violation of any of the provisions of this chapter.

(3) Fraud or deceit in procuring the issuance of a license or renewal under this chapter.

(4) Indulging in a continuous course of unfair conduct.

(5) Insolvency, bankruptcy, receivership, or assignment for the benefit of creditors by a licensee.

(6) Licensee lending money to any debtor that has subscribed to the licensee's services.

(7) Except as provided in subsection (c), offering to pay or give any cash, fee, gift, bonus, premiums, reward, or other compensation to any person for referring any prospective customer to the licensee.

(8) Except as provided in subsection (d), receiving any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the contract debtor in connection with his activities as a licensee.

(9) Licensee requiring a debtor to purchase or agree to purchase a policy of insurance from which licensee receives a fee or other remuneration.

(10) If the licensee violates any reasonable rule or regulation made by the department under and within the authority of this chapter.

(11) Misleading advertising or representing that the licensee can provide protection from legal recourse or suits of creditors.

(b) Except as provided in section 4.1 of this chapter, the denial, revocation, or suspension shall be made only after specific charges have been filed in writing, under oath, with the department or by the department, whereupon a hearing shall be had as to the reasons for

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such denial, revocation, or suspension and a certified copy of the charges shall be served on the licensee or the applicant for license not less than ten (10) days prior to the hearing.

(c) Notwithstanding subsection (a)(7), a licensee may reduce the fees of a contract debtor who is a client of the licensee if the contract debtor refers a prospective customer to the licensee.

(d) Notwithstanding subsection (a)(8), a licensee may receive a fair share creditor fee, based on disbursements made to the creditor, from a debtor's creditors. If any creditor refuses to pay the fair share creditor fee, the creditor must still be included in the contract debtor's payment plan.

(e) If the director of the department:

(1) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or

(2) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may proceed with the revocation of the license under IC 4-21.5-3-6.

SECTION 45. IC 28-1-29-5, AS AMENDED BY P.L.57-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) Every person doing business as a budget service company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the department and shall contain such information as the department may require.

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

(1) the applicant; and

(2) the:

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

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

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

(c) An application submitted under this section must indicate whether:

(1) any:

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

(B) officers and directors of the applicant, if the applicant

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is a corporation;

are, at the time of the application, under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; and

(2) any:

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

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

have been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

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

~~(d)~~ **(e)** Upon written request, an applicant is entitled to a hearing under IC 4-21.5 on the question of the qualifications of the applicant for a license.

SECTION 46. IC 28-1-29-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:**

(1) Any:

(A) members of the licensee, if the licensee is a partnership or association; or

(B) officers and directors of the licensee, if the licensee is a corporation;

are under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(2) Any:

(A) members of the licensee, if the licensee is a partnership or association; or

(B) officers and directors of the licensee, if the licensee is a corporation;

have been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 5(c) of this

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chapter:

(1) not later than thirty (30) days after any person described in subsection (a):

(A) has been put on notice of the indictment; or

(B) has been convicted of or pleaded guilty or nolo contendere to the felony;

whichever applies; or

(2) if the licensee's next license renewal fee under section 3(c) of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 3(d) of this chapter.

SECTION 47. IC 28-1-29-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. **(a)** A licensee ~~(1)~~ shall deliver to every contract debtor, at the time the contract is made, a copy of the contract, showing the:

~~(A)~~ **(1)** date executed;

~~(B)~~ **(2)** rate of charge the licensee will impose;

~~(C)~~ **(3)** initial set up fee;

~~(D)~~ **(4)** cancellation fee;

~~(E)~~ **(5)** amount of debts claimed by the contract debtor to be due ~~his~~ **the contract debtor's** creditors;

~~(F)~~ **(6)** total amount of fee to be assessed by the licensee, including the initial set up fee, but excluding the cancellation fee; and

~~(G)~~ **(7)** total amount of debt to be repaid under the contract;

and shall immediately notify all creditors of the licensee's and debtor's relationship. The contract shall specify the schedule of payments from the debtor under the debt program.

~~(2)~~ **(b) A license** may take no fee unless a debt program or **a** finance program, or both, agreed upon by the licensee and the contract debtor, has been arranged. All creditors must be notified of the debtor's and licensee's relationship. Acceptance of a program payment constitutes agreement by the creditor **to the program.**

~~(3)~~ **(c) A licensee** shall give to the contract debtor a dated receipt for each payment, at the time of the payment, unless the payment is made by check, money order, or direct deposit.

~~(4)~~ **(d) A licensee** shall, upon cancellation by **a** contract debtor of the contract, notify immediately in writing all creditors of contract debtor.

~~(5)~~ **(e) A licensee** shall maintain in ~~his~~ **the licensee's** business such books, accounts, and records as will enable the department or the ~~state's~~ attorney general to determine whether such license is complying with

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this chapter. Such books, accounts, and records shall be preserved for at least three (3) years after making the final entry of any contract recorded therein.

~~(6)~~ **(f) A licensee** may not, except as provided in ~~subdivision (7),~~ **subsection (g)** receive a fee from the contract debtor for services in excess of fifteen percent (15%) of the amount the debtor agrees to pay through the licensee, divided into equal monthly payments over the term of the contract. The total monthly amount of fees paid by the contract debtor to the licensee plus the fair share fees paid by the contract debtor's creditors to the licensee shall not exceed twenty percent (20%) of the monthly amount the debtor agrees to pay through the licensee. The accrual method of accounting shall apply to the creditor's fair share fees received by the licensee. The program fee may be charged for any one (1) month or part of a month. As a portion of the total fees and charges stated in the contract, the licensee may require the debtor to pay a maximum initial payment of fifty dollars ($50). The initial payment must be deducted from the total contract fees and charges to determine the monthly amortizable amount for subsequent fees. Unless approved by the department, the licensee may not retain in the debtor's trust account, for charges, an amount ~~more~~ **greater** than one (1) month's fee plus the close-out fee. Any fee charged by the licensee to the debtor under this section for services rendered by the licensee, other than the amount pursuant to ~~subdivision (7),~~ **subsection (g),** is not considered a debt owed by the debtor to the licensee.

~~(7)~~ **(g)** Upon:

(1) cancellation **of the contract** by a contract debtor; or

(2) termination of payments by a contract debtor;

a licensee may not withhold for ~~his~~ **the licensee's** own benefit, in addition to the amounts specified in ~~subdivision (6),~~ **subsection (f),** more than one hundred dollars ($100), which may be accrued as a close-out fee. The licensee may not charge the contract debtor more than one (1) set up fee or cancellation fee, or both, unless the contract debtor leaves the services of the licensee for more than six (6) months.

~~(8)~~ **(h) A licensee** may not ~~accept an account~~ **enter into a contract with a debtor** unless a thorough, written budget analysis of the debtor indicates that the debtor can reasonably meet the payments required ~~in the budget analysis.~~ **under a proposed debt program or finance program.**

~~(9)~~ **(i) A licensee** may not enter into a contract with a contract debtor for a period longer than twenty-four (24) months.

(j) A licensee may provide services under this chapter in the

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same place of business in which another business is operating, or from which other products or services are sold, if the director issues a written determination that:

(1) the operation of the other business; or

(2) the sale of other products and services;

from the location in question is not contrary to the best interests of the licensee's contract debtors.

(k) A licensee without a physical location in Indiana may:

(1) solicit sales of; and

(2) sell;

additional products and services to Indiana residents if the director issues a written determination that the proposed solicitation or sale is not contrary to the best interests of contract debtors.

SECTION 48. IC 28-1-29-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) All funds received by a licensee or ~~his~~ **the licensee's** agent from and for the purpose of paying bills, invoices, or accounts of a debtor ~~shall~~ constitute trust funds owned by and belonging to the person from whom they were received. All such funds received by a licensee shall be separated from the funds of the licensee not later than the end of the same business day following receipt by the licensee. All such funds shall thereafter be kept separate and apart at all times from funds belonging to the licensee or any of its officers, employees, or agents and may be used for no purpose other than paying bills, invoices, or accounts of said persons. All such trust funds received at the main or branch offices of a licensee shall be deposited in a bank or banks in an account or accounts in the name of the licensee designated "trust account", or by some other appropriate name indicating that the funds are not the funds of the licensee or its officers, employees, or agents, on or before the close of the same banking day following receipt.

(b) Prior to separation and deposit by the licensee, the funds may only be used by the licensee for the making of change or the cashing of checks in the normal course of its business. Such funds are not subject to attachment, levy of execution, or sequestration by order of court except by an obligor for whom a licensee is acting as an agent in paying bills, invoices, or accounts.

(c) Each licensee shall make remittances within thirty (30) days after initial receipt of funds, and thereafter remittances shall be made within fifteen (15) days of receipt, less fees and costs, unless the reasonable payment of one (1) or more of the debtor's obligations requires that the funds be held for a longer period so as to accumulate a sum certain. For the purpose of this section, the cancellation fee set

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forth in section ~~8(7)~~ **8(g)** of this chapter shall not be deemed an obligation of the debtor.

(d) At least once every three (3) months the licensee shall render an accounting to the debtor which ~~shall~~ **must** itemize the total amount received from the debtor, the total amount paid each creditor, the amount of charges deducted, **the amount of fair share fees received by the licensee from each of the contract debtor's creditors,** and any amount held in reserve. A licensee shall, in addition thereto, render such an accounting to a debtor within seven (7) days after written demand, but not more than three (3) per six (6) month period.

(e) Upon the completion or termination of a contract between a licensee and a contract debtor, the licensee shall mail to the contract debtor a statement:

(1) indicating that the licensee no longer holds funds in trust for the contract debtor; and

(2) listing the name and address of:

(A) each creditor paid in full; and

(B) any creditors remaining unpaid.

SECTION 49. IC 28-1-29-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. This chapter does not apply to any attorney at law authorized to practice in this state, or to any individual, partnership, association, limited liability company, or corporation doing business or operating in this state as a trust company or building and loan association, licensed lending institution, court appointed receivers, trustees in bankruptcy, or any not-for-profit corporation providing the services of a budget service company which does not charge the debtor any fee for such services, ~~so long as such persons comply with section 9 of this chapter and any person in charge of such trust funds be bonded for the sum of at least twenty-five thousand dollars ($25,000).~~ **other than fees that are:**

(1) incurred and documented by the person in the course of providing the services, such as fees for postage or fees paid to a third party; and

(2) bona fide and reasonable, as may be defined by a policy or rule of the department.

SECTION 50. IC 28-1-32-8, AS ADDED BY P.L.1-2006, SECTION 491, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) **Except as provided in section 8.1 of this chapter for the conversion of a mutual savings association into a federally chartered credit union,** the department shall prescribe procedures for the conversion of a mutual savings association into a credit union under this chapter.

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(b) The procedures prescribed by the department must include the following:

(1) The savings association must prepare and submit to the department a conversion plan that provides the terms and conditions required by the department for the conversion of the mutual savings association into a credit union.

(2) The conversion plan must be adopted by not less than a majority of the board of directors of the savings association.

(3) Upon approval of the conversion plan by the board of directors of the savings association, the conversion plan and a certified copy of the resolution of the board of directors approving the conversion plan must be submitted to the department for approval.

(4) The conversion plan must be conditioned on the approval of not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties. The director of the department must approve the method used to notify the voting parties of the meeting held to consider the conversion plan. The director of the department may require the converting savings association to provide the voting parties with information regarding the conversion plan.

(5) The savings association must provide to the department additional relevant information requested by the department regarding the conversion plan.

SECTION 51. IC 28-1-32-8.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 8.1. (a) A mutual savings association may convert into a federally chartered credit union by complying with the following requirements:**

(1) The mutual savings association must prepare a conversion plan that provides the terms and conditions for the conversion of the mutual savings association into a federal credit union.

(2) The conversion plan must be adopted by not less than a majority of the board of directors of the mutual savings association.

(3) Unless the articles of incorporation require a greater or lesser vote, the conversion plan must be approved by not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties.

(4) If the conversion plan is approved by the voting parties under subdivision (3), the mutual savings association shall, not later than ninety (90) days after the plan is approved under

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subdivision (3), take all necessary actions to effect the conversion.

(5) Not later than ten (10) days after receipt of the federal charter, the credit union resulting from the charter conversion shall:

(A) file a copy of the federal charter with the department; and

(B) notify the secretary of state that the conversion is complete.

(b) Notwithstanding section 3 of this chapter, the converted federal credit union ceases to be a savings association upon the issuance of the federal charter, unless the federal charter provides for a different effective date for the conversion.

SECTION 52. IC 28-1-33-8, AS ADDED BY P.L.1-2006, SECTION 492, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) **Except as provided in section 8.1 of this chapter for the conversion of a mutual savings bank into a federally chartered credit union,** the department shall prescribe procedures for charter conversions under this chapter.

(b) The procedures prescribed by the department must include the following:

(1) The mutual savings bank must prepare and submit to the department a conversion plan that provides the terms and conditions required by the department for a charter conversion under this chapter.

(2) The conversion plan must be adopted by not less than a majority of the board of directors of the mutual savings bank.

(3) Upon approval of a plan of charter conversion by the board of directors of the savings bank, the conversion plan and a certified copy of the resolution of the board of directors approving the conversion plan must be submitted to the department for approval.

(4) The conversion plan must be conditioned upon the approval of not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties. The director of the department must approve the method used to notify the voting parties of the meeting held to consider the conversion plan. The director of the department may require the converting mutual savings bank to provide the voting parties with information regarding the conversion plan.

(5) The mutual savings bank must provide to the department the additional relevant information requested by the department in

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connection with the conversion plan.

SECTION 53. IC 28-1-33-8.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 8.1. (a) A mutual savings bank may convert into a federally chartered credit union by complying with the following requirements:**

(1) The mutual savings bank must prepare a conversion plan that provides the terms and conditions for the conversion of the mutual savings bank into a federal credit union.

(2) The conversion plan must be adopted by not less than a majority of the board of directors of the mutual savings bank.

(3) Unless the articles of incorporation require a greater or lesser vote, the conversion plan must be approved by not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties.

(4) If the conversion plan is approved by the voting parties under subdivision (3), the mutual savings bank shall, not later than ninety (90) days after the plan is approved under subdivision (3), take all necessary actions to effect the charter conversion.

(5) Not later than ten (10) days after receipt of the federal charter, the credit union resulting from the charter conversion shall:

(A) file a copy of the federal charter with the department; and

(B) notify the secretary of state that the conversion is complete.

(b) Notwithstanding section 4 of this chapter, the converted federal credit union ceases to be a savings bank upon the issuance of the federal charter, unless the federal charter provides for a different effective date for the charter conversion.

SECTION 54. IC 28-2-14-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) As used in this section, "affiliate" includes the following:

~~(1) Any bank that is an affiliate under IC 28-1-18.2-1.~~

(1) A financial institution.

(2) Any company that ~~(A) is controlled by a bank holding company; (B) is an affiliate under IC 28-1-18.2-1; and (C) is: (i) a national banking association to which the Comptroller of the Currency has issued a certificate authorizing the commencement of business; and the operations of which are required by the Comptroller of the Currency to be limited to those of a trust~~

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~~company and activities related thereto; (ii) a trust company organized under the laws of any state, the operations of which are limited to those of a trust company and activities related thereto; or (iii) a corporate fiduciary organized under the laws of any state.~~

controls a financial institution and any other company that is controlled by the company that controls a financial institution.

(3) A bank subsidiary of a financial institution.

(4) Any company:

(A) that is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the financial institution or any company that controls the financial institution; or

(B) in which a majority of the company's directors or trustees constitute a majority of the persons holding any such office with a financial institution or any company that controls the financial institution.

(5) Any:

(A) company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the financial institution or any subsidiary or affiliate of the financial institution; or

(B) investment company with respect to which a financial institution or any affiliate of a financial institution is an investment advisor (as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a)).

(6) Any company that the department determines by regulation or order to have a relationship with the financial institution or any subsidiary or affiliate of the financial institution, such that covered transactions by the financial institution or its subsidiary with that company may be affected by the relationship to the detriment of the financial institution or its subsidiary.

(b) The term "affiliate" does not include the following:

(1) Any company engaged solely in holding the premises of the financial institution.

(2) Any company engaged solely in conducting a safe deposit business.

(3) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and

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interest.

(4) Any company whose control of a financial institution results from the exercise of rights arising from a bona fide debt previously contracted for. The exemption provided by this subdivision applies only:

(A) for the period specifically authorized under applicable state or federal law or regulation; or

(B) in the absence of a law or regulation described in clause (A), for a period of two (2) years after:

(i) the date of the company's exercise of the rights arising from the debt; or

(ii) the effective date of the company's action under item (i);

whichever is later.

Upon application by the company or the financial institution, the department may authorize, for good cause shown, an extension of the period of exemption allowed under this subdivision. Extensions granted by the department under this subdivision may not exceed three (3) years in total.

(c) As used in this section, "financial institution" means any of the following that is organized or reorganized under the laws of the United States or any state (as defined in IC 28-2-17-19) and that has been granted fiduciary powers:

(1) A bank.

(2) A bank and trust company.

(3) A savings bank.

(4) A trust company.

(5) A corporate fiduciary.

(6) An industrial loan and investment company.

(7) A savings association.

(8) A bank of discount and deposit.

(9) A loan and trust and safe deposit company.

~~(b)~~ **(d)** As used in this section, "trust business" means all rights, powers, and duties ~~of~~ **granted to or imposed on** a ~~bank.~~ **financial institution in the exercise of its fiduciary powers, including the following:**

(1) ~~acting~~ **The authority to act** as:

(A) the administrator, coadministrator, executor, coexecutor, trustee, or cotrustee of or in respect to any estate or trust;

(B) the guardian of any person or estate that is being administered under Indiana law;

(C) an agent;

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(D) a custodian (including custodian under the Indiana Uniform Gifts to Minors Act); **or**

(E) an attorney-in-fact.

~~and~~ **The authority conferred by this subdivision includes** any other duties, powers, and appointments regularly administered by, granted to, or conferred upon trust departments established and maintained under IC 28-1-12-3(a) or the departments of national banks **and other financial institutions** that are authorized to exercise ~~trust~~ **fiduciary** powers. ~~or~~

(2) **All rights, powers, and duties** arising from having been named or designated ~~as such~~ **in any capacity described in subdivision (1)** in any will or other writing whenever executed, including wills and other writings naming the predecessor affiliate that are executed after the effective date of the resolution anticipated by subsection ~~(c).~~ **(e).**

~~(c)~~ **(e)** The board of directors of any bank holding company **or other company that controls a financial institution** may adopt a resolution to cause an affiliate it controls to succeed to part or all of the trust business of another affiliate ~~controlled by the bank holding company.~~ **it controls. If a financial institution is not controlled by another company, the board of directors of the financial institution may adopt a resolution to cause part or all of its trust business to succeed to an affiliate.** If the board of directors adopts such a resolution and files a certified copy of it as required by subsection ~~(d),~~ **(f),** the successor affiliate becomes successor fiduciary in place of the predecessor affiliate with all the rights, powers, and duties that were granted to or imposed on the predecessor affiliate. The rights, powers, and duties vest in the successor affiliate, after the taking effect of the succession, irrespective of the date upon which the relation is established, and irrespective of the date of any related written agreement establishing the relationship or of the date of the death of any decedent whose estate is being so administered. Nothing done in connection with the succession effects a renunciation or revocation of any letters of administration or letters testamentary pertaining to the relation, nor does it effect a removal or resignation from the executorship, trusteeship, or other fiduciary relationship.

~~(d)~~ **(f)** If a resolution is adopted under this section, the board of directors shall file a certified copy of the resolution with the department. The board of directors may file the copy in person or by certified mail. The effective date of the succession to part or all of the trust business, as set forth in the resolution, is the date provided in the resolution, which must not be before or more than thirty (30) days after

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the date of filing of the resolution. If the resolution provides no effective date, the effective date is the date of filing.

SECTION 55. IC 28-5-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. As used in this chapter and unless a different meaning appears from the context:

(a) The term "capital and surplus" or "unimpaired capital and unimpaired surplus" has the meaning set forth in 12 CFR 32.2.

~~(a)~~ **(b)** The term "company" shall mean and include any corporation to which this chapter is applicable.

~~(b)~~ **(c)** The term "department" means the department of financial institutions of the state of Indiana.

~~(c) The term "sound capital" means and includes the paid-in and unimpaired capital, the unimpaired surplus, and the unimpaired proceeds of the capital and investment notes and capital debentures of any company which have been issued under the authority and with the approval in writing of the department together with all accrued and unpaid interest on said capital and investment notes and capital debentures which by the terms thereof is~~ payable:

~~(i) at maturity;~~

~~(ii) after a one year notice in writing given by the holder to the company, except that any such company may waive such notice whenever its reserve balance exceeds the amount provided in section 13 of this chapter;~~ or

~~(iii) at a fixed or determinable date or dates, which fixed or determinable date or dates are at intervals of not less than four (4) years.~~

(d) The department is hereby authorized to approve the issue of capital and investment notes and capital debentures by any company to create ~~sound~~ capital **and surplus,** but no such notes and debentures shall be authorized or approved by the department unless such notes and debentures shall, by their terms, provide that the debt, including all accrued and unpaid interest, evidenced thereby shall be subordinate, in order of priority on liquidation, to all of the obligations of the company to the holders of its installment and fully paid certificates of indebtedness or investment and creditors other than such creditors and holders who have expressly agreed otherwise and other than creditors who are such by reason of the ownership of such notes or debentures which the department is authorized to approve by this section.

SECTION 56. IC 28-5-1-6, AS AMENDED BY P.L.235-2005, SECTION 204, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Every company may exercise all the powers conferred upon domestic corporations by IC 23-1 but

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only to the extent that those powers may be necessary, convenient, or expedient to accomplish the purposes for which it is organized. Subject to the restrictions and limitations contained in this chapter, every company may exercise the following powers:

(1) To issue, negotiate, and sell its secured or unsecured certificates of investment or indebtedness, subject to subdivision ~~(17),~~ **(16),** upon terms and conditions, in any form, and payable at times that are not inconsistent with this chapter and, subject to subsection (c), bearing a rate of interest approved by the department.

(2) To make, purchase, discount, or otherwise acquire extensions of credit under IC 24-4.5.

(3) To lend money without security or upon the security of comakers, personal endorsement, or the mortgage of real or personal property or the mortgage or pledge of bailment leases or rentals due and to become due thereunder and other choses in action, and to contract for interest, discount, fees, charges, or other consideration fixed or permitted by any laws of Indiana concerning interest, discount, or usury.

(4) To discount, purchase, or otherwise acquire notes, bills of exchange, acceptances, bailment leases, and the property covered thereby or the rentals due or to become due thereunder or other choses in action and, subject to such restrictions the department imposes, to become owner or lessor of personal or real property acquired upon the request and for the use of a customer, and to incur additional obligations incident to becoming an owner or lessor of the property. The liability of a lessee under the lease does not constitute an obligation (as defined in section 8 of this chapter).

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

(6) To invest in bonds, notes, or certificates which are:

(A) the direct or indirect obligations of the United States or of the state;

(B) obligations of mutual funds or financial institutions if the obligations represent a participation in a fund invested in, or are secured by, direct or indirect obligations of the United States owned by the mutual fund or financial institution;

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(C) the direct obligations of a civil or school county, township, city, town, other taxing district, **or** municipality of Indiana;
(D) a special taxing district in Indiana;
(E) issued by or in the name of:
(i) the trustees of Indiana University;
(ii) the trustees of Purdue University;
(iii) the trustees of Ball State University;
(iv) the trustees of Indiana State University; or
(v) the Indiana health and educational facility finance authority under IC 20-12-63;
(F) issued by or in the name of any municipality of Indiana and payable from the revenues to be derived from the operation of facilities for the production or distribution of water, electricity, gas, or from the operation of sewage works; or
(G) the obligations of any Indiana toll road commission, public library, or schoolhouse holding corporation first mortgage bonds;

which district, municipality, taxing unit, or corporation is not then in default in the payment of either principal or interest on any of its funded obligations and has not so defaulted for a period of more than six (6) months within the five (5) year period immediately preceding the purchase of the securities.

(7) To invest in bonds, notes, or debentures rated in one (1) of the first four (4) classifications established by one (1) or more standard rating services specified by the department that satisfy requirements of marketability prescribed periodically by the department that are the obligations of a person, a firm, a limited liability company, a corporation, a state, a territory, an insular possession of the United States, or a county, township, town, city, taxing district, or municipality thereof which is not then in default in the payment of either principal or interest on any of its funded obligations and has not so defaulted within the five (5) year period immediately preceding the purchase of the securities and other investment securities prescribed by the department by rule. As used in this section, the term "investment securities" means marketable obligations evidencing indebtedness of a person, firm, limited liability company, or corporation in the form of bonds, notes, or debentures commonly known as "investment securities" and the definition of the term "investment securities" prescribed by the department by rule. Except as is otherwise provided in this chapter or otherwise permitted by law, nothing contained in this subdivision authorizes the purchase by an industrial loan and

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investment company of shares of stock or other securities, unless the purchase is necessary to prevent loss under a debt previously contracted in good faith and stocks or other securities so purchased or acquired shall, within six (6) months from the time of its purchase, be sold or disposed of at public or private sale, unless otherwise ordered by the department.

(8) To invest in bonds or debentures issued under and by the authority of the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1429), or of the Home Owners' Loan Act (12 U.S.C. 1461 through 1468), or obligations issued by or for farm credit banks, and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(9) To invest in insured shares of an insured savings association organized under the laws of Indiana, and in insured shares of an insured federal savings association whose principal place of business is located in Indiana; and in certificates of indebtedness or investment of an industrial loan and investment company organized under the laws of Indiana. However, not more than twenty percent (20%) of the resources of the company may be invested in the insured shares of any such association nor more than ten percent (10%) of ~~sound~~ **the company's** capital **and surplus** in such certificates of industrial loan and investment companies.

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

(11) To make loans secured by mortgage on real property or leasehold **if:**

(A) the mortgage is insured by the federal housing administrator; or

(B) the company makes a commitment to insure and to obtain insurance from the administrator, **if the mortgage is not insured by the federal housing administrator.**

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

(13) To discount, purchase, or otherwise acquire charge accounts, and drafts and bills of exchange evidencing charge accounts and to impose and collect monthly service charges and maintenance

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charges on charge accounts, drafts, or bills of exchange which are owned or acquired in amounts agreed upon between the company and the obligor, or obligors, on charge accounts, drafts, and bills of exchange.

(14) To purchase or otherwise acquire property, real or personal, tangible or intangible, in which the company has a security interest to secure a debt owing to the company contracted in good faith or the purchase or acquisition of which property is considered expedient to prevent loss from a debt owing to the company contracted in good faith, and for such purpose to engage in any lawful business considered necessary or expedient by the company to preserve, protect, or make saleable the property. Property thus purchased or acquired shall be sold and disposed of within two (2) years, or a longer period permitted by the department, after the purchase or acquisition.

(15) To act as trustee of a trust created in the United States and forming part of a stock bonus, pension, or profit sharing plan that is qualified for tax treatment under Section 401(d) of the Internal Revenue Code, and to act as trustee or custodian of an individual retirement account within the meaning of Section 408 of the Internal Revenue Code, if the funds of that trust or account are only invested in certificates of investment or indebtedness of the company or in obligations or securities issued by that company. All funds held under this subdivision in a fiduciary capacity may be commingled by the company for appropriate investment purposes. However, individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this subdivision.

(16) To do anything necessary and appropriate to obtain or maintain federal deposit insurance under the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811 through 1833e) or insurance under any other federal or Indiana law providing insurance for certificates of investment or indebtedness issued by a company. A company that obtains and maintains federal deposit insurance is not required to obtain approval from the department concerning the rate of interest payable on, or the form, the terms, or the conditions of the certificates of investment or indebtedness, and the company may exercise all of the powers that are conferred upon institutions maintaining federal deposit insurance that are not in conflict with Indiana law.

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(17) To become a member of a federal home loan bank and acquire, own, pledge, sell, assign, or otherwise dispose of shares of the capital stock of a federal home loan bank.

(18) To borrow money and procure advances from a federal home loan bank and to transfer, assign to, and pledge with the federal home loan bank any of the bonds, notes, contracts, mortgages, securities, or other property of the company held or acquired as security for the payment of the loans and advances.

(19) To possess and exercise all rights, powers, and privileges conferred upon and do and perform all acts and things required of members or shareholders of a federal home loan bank, or by the provisions of 12 U.S.C. 1421 through 1449.

(20) Subject to section 6.3 of this chapter, to exercise the rights and privileges (as defined in section 6.3(a) of this chapter) that are or may be granted to national banks domiciled in Indiana.

(b) No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, applies to loans, advances of credit, or purchases made pursuant to subsection (a)(10), (a)(11), or (a)(12).

(c) If any national or state chartered bank or savings association is not limited by law with regard to the rate of interest payable on any type or category of checking account, savings account, or deposit, certificate of deposit, membership share, or other account, then industrial loan and investment companies are similarly not limited with regard to the interest payable on certificates of investment or indebtedness.

SECTION 57. IC 28-5-1-6.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.3 (a) As used in this section, "rights and privileges" means the power to:

(1) create;

(2) deliver;

(3) acquire; or

(4) sell;

a product, a service, or an investment that is available to or offered by national banks domiciled in Indiana.

(b) An industrial loan and investment company that intends to exercise any rights and privileges that are:

(1) granted to national banks; but

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(2) not authorized for industrial loan and investment companies under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

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

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

(d) The department ~~through its members,~~ may ~~prohibit the company from exercising~~ **deny** the requested rights and privileges ~~only~~ if the ~~members find~~ **department finds** that:

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

(2) the exercise of the requested rights and privileges by the company would adversely affect the safety and soundness of the company;

(3) the exercise of the requested rights and privileges by the company would result in an unacceptable curtailment of consumer protection; or

(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the company.

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

(1) the ~~members~~ **department** must:

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

(B) convene a hearing;

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

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

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

(g) ~~Whenever, in compliance with this section,~~ **If** a company ~~exercises~~ **receives approval to exercise the requested** rights and privileges granted to national banks domiciled in Indiana, **the department shall determine by order whether** all industrial loan and investment companies may exercise the same rights and privileges. ~~if~~ **In making the determination required by this subsection,** the department ~~by order determines~~ **must ensure** that the exercise of the rights and privileges by all industrial loan and investment companies ~~would~~ **will** not:

(1) adversely affect their safety and soundness; **or**

(2) unduly constrain Indiana consumer protection provisions.

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

SECTION 58. IC 28-5-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) Except as otherwise provided in ~~subsection~~ **subsections** (c), **(d), and (e),** ~~of this section,~~ the total obligation of any person, firm, limited liability company, or corporation to any ~~such~~ **industrial loan and investment** company shall at no time exceed fifteen percent (15%) of the amount of the ~~sound~~ capital **and surplus** of ~~such~~ **the** company.

(b) The term "obligations" as used in this section means the direct liability of the maker or acceptor of paper discounted with or sold to any such company, and the liability of the indorser, drawer or guarantor who obtains a loan from, or discounts paper with or sells paper under ~~his~~ **the person's** guaranty to any such company, and, in the case of obligations of a copartnership or association, includes only those obligations of the several members thereof directly related to the copartnership or association, and, in the case of obligations of a corporation, includes all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest.

(c) Subsection (a) ~~of this section~~ does not apply to the following:

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(1) Obligations arising out of the discount of commercial or business paper actually owned by the person, firm, limited liability company, or corporation negotiating such paper.

(2) Obligations of the United States or any instrumentality thereof or of this state, or of any municipal corporation or taxing district thereof, or obligations fully insured by the federal housing administrator as to principal; however, the department may, under such rules and regulations as it may prescribe, limit the total amount that may be invested by any ~~such companies~~ **industrial loan and investment company** in any one **(1)** obligation ~~and~~ **or** in any class of obligations described in ~~clauses~~ **subdivisions** (1) and (2). ~~of this subsection.~~

(3) Obligations arising out of the agreement to repurchase, **or** the guaranty or endorsement of, retail installment sales contracts by a retail seller or subsequent assignee; however, this ~~clause~~ **subdivision** does not apply in any case where such company purchasing such paper does not become the absolute owner, or in any case where installment payments are collected by a prior owner of the paper, or by a retail seller of the goods represented thereby.

(4) Obligations arising out of the agreement to repurchase, **or** the guaranty or indorsement of, title-retaining real estate installment sales contracts by a seller, or subsequent assignees; however, this ~~clause~~ **subdivision** does not apply in any case where such company purchasing such contracts does not become the absolute owner, or in any case where installment payments are collected by a prior owner of the contracts or by a seller of such contracts.

(5) Obligations of the borrower arising out of loans in which the borrower has no personal liability but which are secured by bailment leases or the rentals due and to become due thereunder; and the rights of the lessor in said leases and the property being leased thereunder, and which loans are to be repaid out of said rentals due and to become due under said leases; or obligations arising out of the guaranty, endorsement, or assignment of bailment leases or the rentals due and to become due thereunder by the lessor; however, this ~~clause~~ **subdivision** does not apply in any such case where such company does not have the right or does not actually collect the rentals due or to become due thereunder.

~~(6)~~ **(d)** Obligations to ~~the~~ **an industrial loan and investment** company of any subsidiary or subsidiaries of the company engaged in business for the purpose provided in section 6(a)(15) of this chapter

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shall at no time exceed in the case of one (1) subsidiary ten percent (10%) of the ~~sound~~ capital **and surplus** of the company or, in the case of more than one (1) subsidiary, in the aggregate twenty percent (20%) of the ~~sound~~ capital **and surplus** of the company unless in either case the department shall approve a larger percentage.

~~(7)~~ **(e)** Obligations to ~~the~~ **an industrial loan and investment** company of any subsidiary or subsidiaries of the company engaged in business for the purpose provided in section 6(a)(14) of this chapter shall at no time exceed in the aggregate thirty percent (30%) of the amount of the ~~sound~~ capital **and surplus** of the company or such larger sum as the department may approve.

~~(d)~~ **(f)** Except as otherwise provided in this subsection and in section 9 of this chapter, no loan shall be made, directly or indirectly, by any industrial loan and investment company, to any active executive officer, agent, or employee thereof. The board of directors or executive committee of any industrial loan and investment company may, by resolution, duly entered in the records of the proceedings of the board or committee, authorize loans to or extend lines of credit to:

(1) any active executive officer, agent, or employee of such industrial loan and investment company in any amount not exceeding, at any one **(1)** time outstanding:

~~(i)~~ **(A)** ten thousand dollars ($10,000); plus

~~(ii)~~ **(B)** ten thousand dollars ~~($10,000.00)~~ **($10,000)** which ~~shall~~ **may** be used for the sole purpose of educating the children of such active executive officer, agent, or employee as hereinafter provided; or

(2) directors not holding any office in such industrial loan and investment company, and not ~~being~~ **acting as** an agent or employee thereof.

The board or committee may likewise authorize loans to or extend lines of credit to firms, limited liability companies, or corporations in which active executive officers, agents or employees or directors may be partners, members, or stockholders, but the total amount of the obligations of all such active executive officers, agents, or employees, and directors, or other firms, limited liability companies, or corporations in which such active executive officers, agents, employees, and directors are partners, members, or stockholders, shall not at any time exceed fifteen percent (15%) of the total resources of the industrial loan and investment company at the time any such loan or extension of credit is made. Loans and lines of credit permitted by this subsection shall be made only on authorization by a majority of all of the directors or members of the executive committee of such

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industrial loan and investment company, and by the affirmative vote of all directors or members of the executive committee present at the meeting, and such authorization may be general and need not be given for each loan or line of credit extended; however, such general authorization shall be voted upon at least annually. When a line of credit has been extended pursuant to this subsection to any such active executive officer, agent, or employee or to any such director, or to any firm, corporation, limited liability company, or partnership in which an active executive officer, agent, employee, or director may be a partner, member, or stockholder, any notes or other instruments evidencing an indebtedness to the industrial loan and investment company, and any renewals or extensions thereof, need not be authorized as otherwise required by this subsection if such loan, or any renewal or any extension thereof, is within the terms of the authorization of the line of credit theretofore extended by the directors or executive committee to such active executive officer, agent, or employee, or to such director, or to any firm, corporation, limited liability company, or partnership in which any active executive officer, agent, employee, or director may be a partner, member or stockholder. The department, under such general rules and regulations as it may prescribe, which shall apply to all industrial loan and investment companies alike, may require full collateral security for all loans of the types permitted by this subsection and, for the purpose of providing that such security may be adequate, may specify the types thereof that may be pledged. Subject to section 9 of this chapter, the limitations of this subsection shall not apply to a loan by an industrial loan and investment company to an active executive officer, agent, or employee thereof made upon the security of real estate whereupon such active executive officer, agent, or employee maintains ~~his~~ **the person's** actual residence. The term "actual residence" includes a two-family dwelling unit if one **(1)** of such units is occupied by the active executive officer, agent, or employee of the industrial loan and investment company.

~~(c)~~ **(g)** An officer or director of any industrial loan and investment company who knowingly violates subsection ~~(d) of this section~~ **(f)** commits a Class B felony.

SECTION 59. IC 28-5-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) Any such company shall have the power to purchase, hold and convey real estate for the following purposes and for no others:

(1) Such as shall be necessary for the convenient transaction of its business, but the cost or value of such real estate as carried on its books shall not exceed fifty percent (50%) of the amount of its

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~~sound~~ capital **and surplus,** without the written consent of the department.

(2) Such as shall be conveyed to it in satisfaction of debts or obligations previously contracted in the course of its dealings, or in exchange for real estate so conveyed to it.

(3) Such as it shall purchase at sales under judgments or decrees of foreclosure on mortgages held by such company or shall acquire as additional security for obligations due such company.

(4) Such as shall have been sold under a title-retaining, installment, real estate sales contract, the term of which does not exceed twelve (12) years, where such contract is either purchased by it or taken as collateral security for a loan. However, the total cost of all real estate sold on title-retaining installment sales contracts as carried on the books of the company shall not at any one (1) time exceed five percent (5%) of the total resources of the company when such real estate title-retaining installment sales contracts were acquired without the written approval of the department.

(b) No such company shall hold the title or possession of any real estate purchased or otherwise acquired to secure any debts or obligations due to it, for a longer period than ten (10) years after such real estate is or has been purchased or otherwise acquired without the consent in writing of the department. However, any such company may sell any real estate so purchased or otherwise acquired by it under a title-retaining installment real estate sales contract, the term of which shall not exceed twelve (12) years, and hold title or possession thereof until the same is conveyed to the purchaser thereof under the terms and provisions of any such contract.

(c) For the purposes of subsection (a)(1), real estate purchased or held for the convenient transaction of the business of a company includes the following:

(1) Real estate on which the principal office or a branch office of the company is located.

(2) Real estate that is the location of facilities supporting the operations of the company, such as parking facilities, data processing centers, loan production offices, automated teller machines, night depositories, facilities necessary for the operations of a company subsidiary, or other facilities that are approved by the director.

(3) Real estate that the board of directors of the company expects, in good faith, to use as a company office or facility in the future.

(d) If real estate referred to in subsection (c)(3) is held by a

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company for one (1) year without being used as a company office or facility, the board of directors of the company shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the department.

(e) Real estate referred to in subsection (c)(3) may not be held by a company for more than three (3) years without being used as a company office or facility unless:

(1) the board of directors of the company, by resolution:

(A) reaffirms annually that the company expects to use the real estate as a company office or facility in the future; and

(B) explains the reason why the real estate has not yet been used as a company office or facility; and

(2) the director determines that:

(A) the continued holding of the real estate by the company does not endanger the safety and soundness of the company; and

(B) the company is holding the real estate to use the real estate in the future for one (1) of the purposes set forth in subsection (c)(1) and (c)(2).

(f) Real estate referred to in subsection (c)(3) may not be held by a company for more than ten (10) years without being used as a company office or facility unless the department consents in writing to the continued holding of the real estate by the company.

SECTION 60. IC 28-5-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15. **(a)** The department shall have charge of the organization, supervision, regulation, examination, and liquidation of all industrial loan and investment companies to which this chapter is applicable, to the same extent and in the same manner as is provided for financial institutions in IC 28-1 and IC 28-11, and for such purpose any company to which this chapter is applicable shall be deemed to be and shall be a financial institution within the meaning of the term as used in IC 28-1-2, IC 28-1-3.1, and IC 28-11. The department shall be subject to the same limitations with reference to the disclosure of information as is provided in IC 28-11-3-3.

(b) In conducting an examination of an industrial loan and investment company, the department shall include an examination of the affairs of all the industrial loan and investment company's affiliates necessary to disclose fully:

(1) the relations between the industrial loan and investment company and its affiliates; and

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(2) the effect of the relations described in subdivision (1) upon the affairs of the industrial loan and investment company.

In conducting the examination of an affiliate of an industrial loan and investment company, the department has the same powers to examine the affiliate as the department has to examine the affairs of the industrial loan and investment company under this section.

SECTION 61. IC 28-6.1-6-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 24. (a) As used in this section, "rights and privileges" means the power to:

(1) create;
(2) deliver;
(3) acquire; or
(4) sell;

a product, a service, or an investment that is available to or offered by national banks domiciled in Indiana.

(b) Subject to the conditions set forth in this section, a savings bank may exercise the rights and privileges that are or may be granted to national banks domiciled in Indiana.

(c) A savings bank that intends to exercise any rights and privileges that are:

(1) granted to national banks; but
(2) not authorized for a savings bank under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

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

(d) The department shall promptly notify the requesting savings bank of the department's receipt of the letter submitted under subsection (c). Except as provided in subsection (f), the savings bank may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(e) The department ~~through its members,~~ may ~~prohibit the savings bank from exercising~~ **deny** the requested rights and privileges ~~only~~ if the ~~members find~~ **department finds** that:

(1) national banks domiciled in Indiana do not possess the requested rights and privileges; ~~or~~
(2) the exercise of the requested rights and privileges by the savings bank would adversely affect the safety and soundness of

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the savings bank;

(3) the exercise of the requested rights and privileges by the savings bank would result in an unacceptable curtailment of consumer protection; or

(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the savings bank.

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

(1) the ~~members~~ **department** must:

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

(B) convene a hearing;

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

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

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

(h) ~~Whenever, in compliance with this section,~~ **If** a savings bank ~~exercises~~ **receives approval to exercise the requested** rights and privileges granted to national banks domiciled in Indiana, **the department shall determine by order whether** all savings banks may exercise the same rights and privileges. ~~if~~ **In making the determination required by this subsection,** the department ~~by order determines~~ **must ensure** that the exercise of the rights and privileges by all savings banks ~~would~~ **will** not:

(1) adversely affect their safety and soundness; **or**

(2) unduly constrain Indiana consumer protection provisions.

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

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SECTION 62. IC 28-6.1-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) Subject to the prior written approval of the department, a savings bank may purchase, hold, and convey real property that is:

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

(2) to be used, in part, as a branch of the savings bank and, in part, as rental property for one (1) lessee.

(b) If real estate described in subsection (a) is held by a savings bank for at least one (1) year without being used as described in subsection (a), the board of directors of the savings bank shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the department.

~~(b)~~ **(c)** Unless a written extension of time is given by the department **under this subsection,** the savings bank shall open the branch ~~within two (2)~~ **not later than three (3)** years ~~from~~ **after** the acquisition date of the real estate. **The department may grant an extension of time for the savings bank to open the branch if:**

(1) the board of directors of the savings bank, by resolution:

(A) reaffirms annually that the savings bank expects to use the real estate as described in subsection (a) in the future; and

(B) explains the reason why the real estate has not yet been used as described in subsection (a); and

(2) the director determines that:

(A) the continued holding of the real estate by the savings bank does not endanger the safety and soundness of the savings bank; and

(B) the savings bank is holding the real estate to use the real estate in the future for one (1) of the purposes set forth in subsection (a).

~~(c)~~ **(d)** If the savings bank:

(1) does not open a branch on the real estate within the period specified in subsection ~~(b),~~ **(c);** or

(2) removes its branch from the real estate;

the savings bank shall divest itself of all interest in the real estate not more than ten (10) years after the acquisition date of the real estate, if a branch was not opened, or ten (10) years after the removal date of the branch office.

~~(d)~~ **(e)** Except with the written approval of the department, the sum invested in real property and buildings used for the convenient

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transaction of the savings bank's business as provided in this section may not exceed fifty percent (50%) of the surplus and retained earnings of the savings bank.

SECTION 63. IC 28-6.1-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter, "capital and surplus" and "unimpaired capital and surplus" have the meaning set forth in 12 CFR ~~32.~~ **32.2.**

SECTION 64. IC 28-7-1-0.5, AS AMENDED BY P.L.141-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 0.5. The following definitions apply throughout this chapter:

(1) "Automated teller machine" (ATM) means a piece of unmanned electronic or mechanical equipment that performs routine financial transactions for authorized individuals.

(2) "Branch office" means an office, agency, or other place of business at which deposits are received, share drafts are paid, or money is lent to members of a credit union. The term does not include:

(A) the principal office of a credit union;

(B) the principal office of a credit union affiliate;

(C) a branch office of a credit union affiliate;

(D) an automated teller machine; or

(E) a night depository.

(3) "Credit union" is a cooperative, nonprofit association, incorporated under this chapter, for the purposes of educating its members in the concepts of thrift and to encourage savings among its members. A credit union should provide a source of credit at a fair and reasonable rate of interest and provide an opportunity for its members to use and control their own money in order to improve their economic and social condition.

(4) "Department" refers to the department of financial institutions.

(5) "Surplus" means the credit balance of undivided earnings after losses. The term does not include statutory reserves.

(6) "Unimpaired shares" means paid in shares less any losses for which no reserve exists and for which there is no charge against undivided earnings.

(7) "Related credit union service organization" means, in reference to a credit union, a credit union service organization in which the credit union has invested under section ~~9(4)(J)~~ **9(3)(J)** of this chapter.

(8) "Premises" means any office, branch office, suboffice, service center, parking lot, real estate, or other facility where the credit

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union transacts or will transact business.

(9) "Furniture, fixtures, and equipment" means office furnishings, office machines, computer hardware, computer software, automated terminals, and heating and cooling equipment.

(10) "Fixed assets" means:

(A) premises; and

(B) furniture, fixtures, and equipment.

(11) "Audit period" means a twelve (12) month period designated by the board of directors of a credit union.

(12) "Community" means:

(A) a second class city;

(B) a third class city;

(C) a town;

(D) a county other than a county containing a consolidated city;

(E) a census tract;

(F) a township; or

(G) any other municipal corporation (as defined in IC 36-1-2-10).

(13) "Control of a related interest" refers to a situation in which an individual directly or indirectly, or through or in concert with one (1) or more other individuals, possesses any of the following:

(A) The ownership of, control of, or power to vote at least twenty-five percent (25%) of any class of voting securities of the related interest.

(B) The control in any manner of the election of a majority of the directors of the related interest.

(C) The power to exercise a controlling influence over the management or policies of the related interest. For purposes of this clause, an individual is presumed to have control, including the power to exercise a controlling influence over the management or policies of a related interest, if the individual:

(i) is an executive officer or a director of the related interest and directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest; or

(ii) directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

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(14) "Executive officer" includes any of the following officers of a credit union:

(A) The chairman of the board of directors.

(B) The president.

(C) A vice president.

(D) The cashier.

(E) The secretary.

(F) The treasurer.

(15) "Immediate family", **for purposes of section 17.1 of this chapter,** means the spouse of an individual, the individual's minor children, and any of the individual's children, including adults, residing in the individual's home.

(16) "Officer" means any individual who participates or has the authority to participate in major policymaking functions of a credit union, regardless of whether:

(A) the individual has an official title;

(B) the individual's title designates the individual as an assistant; or

(C) the individual is serving without salary or other compensation.

(17) "Related interest", with respect to an individual, means:

(A) a partnership, a corporation, or another business organization that is controlled by the individual; or

(B) a political campaign committee:

(i) controlled by the individual; or

(ii) the funds or services of which benefit the individual.

(18) "Unimpaired capital and ~~unimpaired~~ surplus" ~~means the sum of: (A) undivided profits; (B) reserve for contingencies; (C) regular reserve; and (D) allowance for loan and lease losses.~~ **has the meaning set forth in 12 CFR 700.2.**

SECTION 65. IC 28-7-1-9, AS AMENDED BY P.L.141-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. A credit union has the following powers:

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

(2) To make loans to officers, directors, or committee members under section 17.1 of this chapter.

(3) To invest in any of the following:

(A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing

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district or municipality or instrumentality of Indiana and that are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

(C) Interest-bearing obligations of the FSLIC Resolution Fund and obligations of national mortgage associations issued under the authority of the National Housing Act.

(D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).

(E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(F) In savings and loan associations, other credit unions that are insured under IC 28-7-1-31.5, and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company; nor more than forty percent (40%) in all such associations and companies.

(G) Corporate credit unions.

(H) Federal funds or similar types of daily funds transactions with other financial institutions.

(I) Mutual funds created and controlled by credit unions, credit union associations, or their subsidiaries. Mutual funds referred to in this clause may invest only in instruments that are approved for credit union purchase under this chapter.

(J) Shares, stocks, or obligations of any credit union service organization (as defined in Section 712 of the Rules and Regulations of the National Credit Union Administration) with the approval of the department. Not more than ~~five~~ **ten** percent ~~(5%)~~ **(10%)** of the total paid in and unimpaired capital **and unimpaired shares** of the credit union may be invested under this clause. **However, a credit union may invest more than ten percent (10%) of the total paid in an unimpaired capital and unimpaired shares with the prior approval of the department.**

(K) For a credit union that is well capitalized (as defined in Section 702 of the Rules and Regulations of the National Credit Union Administration), investment securities, as

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may be defined by a policy or rule of the department and subject to the following:

(i) The department may prescribe, by policy or rule, limitations or restrictions on a credit union's investment in investment securities.

(ii) The total amount of any investment securities purchased or held by a credit union may never exceed at any given time ten percent (10%) of the unimpaired capital and surplus of the credit union. However, the limitations imposed by this item do not apply to investments in the direct or indirect obligations of the United States or in the direct obligations of a United States territory or insular possession, or in the direct obligations of the state or any municipal corporation or taxing district in Indiana.

(iii) A credit union may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this item, a security is speculative or has speculative characteristics if at the time of purchase the security is in default or is rated below the first four (4) rating classes by a generally recognized security rating service.

(iv) A credit union may purchase for its own account a security that is not rated by a generally recognized security rating service if the credit union at the time of purchase obtains financial information that is adequate to document the investment quality of the security.

(v) A credit union that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

(vi) Except as otherwise authorized by this title, a credit union may not purchase any share of stock of a corporation.

(L) Collateralized obligations that are eligible for purchase and sale by federal credit unions. However, a credit union may purchase for its own account and sell the obligations only to the extent that a federal credit union can purchase and sell those obligations.

(4) To deposit its funds into:

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(A) depository institutions that are federally insured; or

(B) state chartered credit unions that are privately insured by an insurer approved by the department.

(5) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.

(6) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.

(7) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.

(8) To charge the member's share account for the actual cost of **a** necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.

(9) To transfer to an accounts payable **account,** a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of **at least** two (2) years. The credit union shall not consider the payment of dividends on the transferred account.

(10) To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its assets is subject to the approval of the department.

(11) To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.

(12) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

(13) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

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(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.

(14) To sell and cash negotiable checks, travelers checks, and money orders for members.

(15) To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of its unimpaired capital and surplus unless special written authorization has been granted by the department.

(16) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(17) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a tax advantaged savings plan which qualifies or qualified for specific tax treatment under Section 223, 401(d), 408, 408A, or 530 of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.

(18) To issue shares of its capital stock or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.

(19) A credit union may exercise any rights and privileges that are:

(A) granted to federal credit unions; but

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

if the credit union complies with section 9.2 of this chapter.

(20) To sell, pledge, or discount any of its assets. However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.

(21) To purchase assets of another credit union and to assume the liabilities of the selling credit union.

(22) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county

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governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed twenty percent (20%) of the total assets of that credit union, excluding those public funds.

(23) To join the National Credit Union Administration Central Liquidity Facility.

(24) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(25) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

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

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

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

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

(27) Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional

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obligations as may be incident to becoming an owner or lessor of such property.

SECTION 66. IC 28-7-1-9.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

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

(2) to engage in other activities authorized for;

federal credit unions domiciled in Indiana.

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

(1) granted to federal credit unions; but

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

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

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

(d) The department ~~through its members,~~ may ~~prohibit the credit union from exercising~~ **deny** the requested rights and privileges ~~only~~ if the ~~members find~~ **department finds** that:

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

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

(3) the exercise of the requested rights and privileges by the credit union would result in an unacceptable curtailment of consumer protection; or

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(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the credit union.

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

(1) the ~~members~~ **department** must:

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

(B) convene a hearing;

not later than sixty (60) days after the department receives the credit union's letter; and

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

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

(g) ~~Whenever, in compliance with this section,~~ **If** a credit union ~~exercises~~ **receives approval to exercise the requested** rights and privileges granted to federal credit unions domiciled in Indiana, **the department shall determine by order whether** all credit unions may exercise the same rights and privileges. ~~if~~ **In making the determination required by this subsection,** the department ~~by order determines~~ **must ensure** that the exercise of the rights and privileges by all credit unions ~~would~~ **will** not:

(1) adversely affect their safety and soundness; **or**

(2) unduly constrain Indiana consumer protection provisions.

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

SECTION 67. IC 28-7-1-17, AS AMENDED BY P.L.141-2005, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) Every loan application shall be submitted on a form approved by the board of directors. When making an

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application, a member shall state the security offered. Loans may be dispersed upon written approval by a majority of the credit committee or a loan officer. If the credit committee or loan officer fails to approve an application for a loan, the applicant may appeal to the board of directors, providing such appeal is authorized by the bylaws.

(b) Loans to members may be made only under the following terms and conditions:

(1) All loans shall be evidenced by notes signed by the borrowing member.

(2) Except as otherwise provided in this section, the terms of any loan to a member with a maturity of more than six (6) months shall provide for principal and interest payments that will amortize the obligation in full within the terms of the loan contract. If the income of the borrowing member is seasonal, the terms of the loan contract may provide for seasonal amortization.

(3) Loans may be made upon the security of improved or unimproved real estate. Except as otherwise specified in this section, such loans must be secured by a first lien upon real estate prior to all other liens, except for taxes and assessments not delinquent, and may be made with repayment terms other than as provided in subdivision (2). When the amount of a loan is at least two hundred fifty thousand dollars ($250,000), the fair cash value of real estate security shall be determined by a written appraisal made by one (1) or more qualified state licensed or certified appraisers designated by the board of directors. The credit union loan folder for real estate mortgage loans shall include, when applicable:

(A) the loan application;

(B) the mortgage instrument;

(C) the note;

(D) the disclosure statement;

(E) the documentations of property insurance;

(F) an appraisal on the real estate for which the loan is made; and

(G) the attorney's opinion of titles or a certificate of title insurance on the real estate upon which the mortgage loan is made.

(4) ~~The total unpaid balance of all loans authorized by this subdivision shall, at no time, exceed thirty-three and one-third percent (33 1/3%) of the total assets of the credit union at the time the loans are granted. This section does not limit unpaid balances secured by adjustable rate mortgages or loans with a remaining~~

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~~maturity of five (5) years or less.~~ Loans made upon security of real estate are subject to the following restrictions:

(A) Real estate loans in which no principal amortization is required shall provide for the payment of interest at least annually and shall mature within five (5) years of the date of the loan unless extended and shall not exceed fifty percent (50%) of the fair cash value of the real estate used as security.

(B) Real estate loans on improved real estate, except for variable rate mortgage loans and rollover mortgage loans provided for in subdivision (5), shall require substantially equal payments at successive intervals of not more than one (1) year, shall mature within thirty (30) years, and shall not exceed ~~ninety~~ **one hundred** percent ~~(90%)~~ **(100%)** of the fair cash value of the real estate used as security. ~~unless the excess of any loan over the authorized percentage of fair cash value is guaranteed or insured by a government agency or a private insurer authorized to engage in such business in Indiana.~~

(C) Real estate loans on unimproved real estate may be made. The terms of the loan shall:

(i) require substantially equal payments of interest and principal at successive intervals of one (1) year or less;

(ii) mature within ten (10) years; and

(iii) not exceed eighty-five percent (85%) of the fair cash value of the real estate used as security.

(D) Loans primarily secured by a mortgage which constitutes a second lien on improved real estate may be made only if the aggregate amount of all loans on the real estate does not exceed one hundred percent (100%) of the fair cash value of the real estate after such loan is made. Repayment terms shall be in accordance with subdivision (2).

(E) Real estate loans may be made for the construction of improvements to real property. Funds borrowed may be advanced as work on the improvements progresses. Repayment terms must comply with subdivision (2).

(5) Subject to the limitations of subdivision (3), variable rate mortgage loans and rollover mortgage loans may be made under the same limitations and rights provided state chartered savings associations under IC 28-1-21.5 (before its repeal) or IC 28-15 or federal credit unions.

(6) A credit union may participate with other financial institutions in making loans to credit union members and may sell a participating interest in any of its loans. However, the credit union

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may not sell more than ninety percent (90%) of the principal of participating loans outstanding at the time of sale.

(7) Notwithstanding subdivisions (1) through (6), a credit union may make any of the following:

(A) Any loan that may be made by a federal credit union. However, IC 24-4.5 applies to any loan that is:

(i) made under this clause; and

(ii) within the scope of IC 24-4.5.

Any provision of federal law that is in conflict with IC 24-4.5 does not apply to a loan made under this clause.

(B) Subject to subdivision (3), any alternative mortgage loan (as defined in IC 28-15-11-2) that may be made by a savings association (as defined in IC 28-15-1-11) under IC 28-15-11. A loan made under this clause by a credit union is subject to the same terms, conditions, exceptions, and limitations that apply to an alternative mortgage loan made by a savings association under IC 28-15-11.

(8) A credit union may make a loan under either:

~~(i)~~ **(A)** subdivisions (2) through (6); or

~~(ii)~~ **(B)** subdivision (7);

but not both. A credit union shall make an initial determination as to whether to make a loan under subdivisions (2) through (6) or under subdivision (7). If the credit union determines that a loan or category of loans is to be made under subdivision (7), the written loan policies of the credit union must include that determination. A credit union may not combine the terms and conditions that apply to a loan made under subdivisions (2) through (6) with the terms and conditions that apply to a loan made under subdivision (7) to make a loan not expressly described and authorized either under subdivisions (2) through (6) or under subdivision (7).

(c) Nothing in this section prevents any credit union from taking an indemnifying or second mortgage on real estate as additional security.

SECTION 68. IC 28-7-1-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 34. (a) A credit union organized under the laws of another state may establish a branch office in Indiana if:

(1) the credit union files an application with the department;

(2) the branch office is necessary to serve members within the field of membership of the credit union;

(3) the field of membership of the credit union is consistent with the laws of Indiana;

(4) the law of the state in which the credit union was organized

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provides for the establishment of a branch office in that state by an Indiana credit union; and

(5) the department approves the application of the credit union.

(b) If the credit union that has established a branch office in Indiana is subsequently granted an expansion of its field of membership by its chartering state, the expanded field of membership must be approved by the department before the expanded field of membership can be served in Indiana. If an out-of-state credit union desires to establish a branch office in Indiana and that credit union's field of membership is an incorporated entity, the incorporated entity may not be admitted to do business in Indiana as a foreign corporation by the secretary of state's office until the department has approved the entry of the credit union to establish a branch office.

(c) The department shall provide to a credit union desiring to establish a branch office in Indiana an application, which must provide at least the following information:

(1) The credit union's financial condition.

(2) The credit union's field of membership and the number of members to be served in Indiana.

(3) The proposed location of any branch offices.

(4) A letter of approval from the supervisory agency in the state in which the credit union's principal office is located, including a statement indicating whether such supervisory agency conducts periodic examinations of the credit union.

(5) A statement that the credit union, with respect to its operation in this state, will comply with all **applicable state and federal** laws, rules, and regulations, ~~applicable to state or federal credit unions in Indiana.~~ **as determined by the director.**

(d) The department shall approve or deny the application within one hundred twenty (120) days. The department may deny the application or suspend or revoke an application previously approved if it finds any of the following:

(1) That the credit union is insolvent or in imminent danger of insolvency.

(2) That the credit union does not have the approval of its supervisory agency.

(3) That the credit union fails to meet the requirements of subsection (e).

(4) A failure to comply with any written agreement or final order of the department or chartering supervisory agency that has regulatory authority over the credit union.

(5) **That the credit union has been** serving an expanded field of

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membership in Indiana before obtaining the approval of the department for the expansion in the field of membership.

(e) Any out-of-state credit union that has been approved to establish branch offices in this state shall, in addition to such other provisions of law applicable to credit unions, comply with the following:

(1) Designate a resident agent for the service of process in this state.

(2) Submit a copy of all reports required by its supervisory agency, unless otherwise required by the department to submit reports prescribed by the department.

(3) Submit a copy of every:

(A) regulatory examination report; and

(B) insurance examination report;

to the department.

(4) Conduct its lending activities in accordance with Indiana law.

(f) The department may examine such a branch office if it has reason to believe that the branch office is not operating in compliance with laws, rules, or regulations. The reasonable cost of any such examination authorized by this subsection shall be paid by the credit union.

(g) For purposes of this section, IC 28-1-2-30 applies to information obtained by or provided to the department concerning branch offices established under this section.

(h) The department may enter into cooperative, coordinating, and information sharing agreements with an organization listed in IC 28-11-3-3 with respect to the periodic examination or other supervision of a branch:

(1) in Indiana of an out-of-state credit union; or

(2) of an Indiana state credit union in a host state;

and the department may accept the organization's reports of examination and reports of investigation instead of conducting the department's own examinations or investigations.

(i) The department may enter into agreements with a financial institution supervisory agency that has concurrent jurisdiction over an Indiana state credit union or an out-of-state credit union operating a branch in Indiana under this chapter to:

(1) engage the services of the agency's examiners at a reasonable rate of compensation; or

(2) provide the services of the department's examiners to the agency at a reasonable rate of compensation.

An agreement under this subsection is subject to IC 36-1-7.

(j) The department may enter into joint examinations or joint

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enforcement actions with other credit union supervisory agencies having concurrent jurisdiction over a branch established and maintained in Indiana by an out-of-state credit union or a branch established and maintained by an Indiana state credit union in a host state. The department may take action independently if the department considers the action to be necessary or appropriate to carry out its responsibilities under this chapter or to ensure compliance with Indiana law.

(k) An out-of-state credit union that maintains at least one (1) branch in Indiana is subject to IC 28-11-3-5. Fees may be shared with other financial institution supervisory agencies or an organization affiliated with or representing at least one (1) credit union supervisory agency under agreements between those parties and the department.

SECTION 69. IC 28-7-5-4, AS AMENDED BY P.L.57-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) Application for a pawnbroker's license shall be submitted on a form prescribed by the department and must include all information required by the department. An application submitted under this section must identify the location or locations at which the applicant proposes to engage in business as a pawnbroker in Indiana. If any business, other than the business of acting as a pawnbroker under this chapter, will be conducted by the applicant or another person at any location identified under this subsection, the applicant shall indicate for each location at which another business will be conducted:

(1) the nature of the other business;

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

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

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

(5) any other information the director may require.

(b) An application submitted under this section must indicate whether:

(1) the applicant, at the time of the application, is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or

(2) has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

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

(1) the time of application;

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

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

~~(c)~~ **(d)** For purposes of subsection ~~(b),~~ **(c),** evidence of compliance with this section may include:

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

(2) credit histories; and

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

SECTION 70. IC 28-7-5-10.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10.1. A licensee that decides to cease engaging in business as a pawnbroker in Indiana shall do the following not later than thirty (30) days before closing the licensee's pawnbroking business:**

(1) Notify the department of:

(A) the licensee's intention to cease engaging in business as a pawnbroker in Indiana; and

(B) the date on which the licensee's pawnbroking business will cease.

(2) Surrender the license to the department.

(3) Provide the following to all pledgers that have loans outstanding with the licensee:

(A) Notice of:

(i) the licensee's intention to cease engaging in business as a pawnbroker in Indiana; and

(ii) the date on which the licensee's pawnbroking business will cease.

(B) Instructions, approved by the director, on how pledged articles may be redeemed before the date identified under clause (A)(ii).

SECTION 71. IC 28-7-5-10.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:**

(1) The licensee is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(2) The licensee has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

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(b) If this section applies, the licensee shall provide to the department the information required under section 4(b) of this chapter:

(1) not later than thirty (30) days after the licensee:

(A) has been put on notice of the indictment; or

(B) has been convicted of or pleaded guilty or nolo contendere to the felony;

whichever applies; or

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

SECTION 72. IC 28-7-5-21, AS AMENDED BY P.L.57-2006, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 21. (a) The pawnbroker shall, at the time of making a loan, deliver to the pledger or the pledger's agent a memorandum or ticket on which shall be legibly written or printed the following information:

(1) The name of the pledger.

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

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

(4) The amount of the loan.

(5) The date of the transaction.

(6) The serial number of the loan.

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

(8) The amount of interest.

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

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

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(11) The date of birth of the pledger.

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

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

(14) A statement that:

(A) notifies the pledger that the pawnbroking transaction is regulated by the department; and

(B) includes a toll free telephone number for the department.

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

SECTION 73. IC 28-7-5-30, AS AMENDED BY P.L.57-2006, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 30. (a) Subject to ~~subsection~~ **subsections** (b) **and (c),** upon the expiration of two (2) months from the maturity of the loan, a pawned article becomes the property of the pawnbroker and is subject to sale.

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

(1) the term of the loan; and

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

to repay the loan and redeem the pawned article.

(c) During the term of the loan and the two (2) month period described in subsection (a), the pawnbroker may not allow the public to have access to the pawned article.

SECTION 74. IC 28-8-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. Any two (2) or more banks or trust companies may invest in a bank service corporation an amount not to exceed ten percent (10%) of the ~~sound~~ capital **and surplus** of each of them as defined in IC 28-1-1.

SECTION 75. IC 28-8-4-24, AS AMENDED BY P.L.57-2006, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2007]: Sec. 24. An application must contain the following:

(1) The name of the applicant.

(2) The applicant's principal address.

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

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

(5) The history of the applicant's:

(A) material litigation; and

(B) criminal **indictments,** convictions, ~~for the five (5) years before the date of the application.~~ **and guilty or nolo contendere pleas for felonies involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.**

(6) A description of:

(A) the activities conducted by the applicant;

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

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

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

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

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

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

(A) the nature of the other business;

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

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

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

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

However, the applicant is not required to submit the information required by this subdivision if the location at which the other business will be conducted is the place of business of an authorized delegate that is not under common control with the applicant.

(11) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or

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through which such payment instruments will be payable.

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

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

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

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

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

SECTION 76. IC 28-8-4-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 25. In addition to the items listed in section 24 of this chapter, if an applicant is a corporation, the applicant must provide the following items and information relating to the applicant's corporate structure:

(1) State of incorporation.

(2) Date of incorporation.

(3) A certificate from the state in which the applicant was incorporated stating that the corporation is in good standing.

(4) A description of the corporate structure of the applicant, including the following:

(A) The identity of the parent of the applicant.

(B) The identity of each subsidiary of the applicant.

(C) The names of the stock exchanges in which the applicant, the parent, and the subsidiaries are publicly traded.

(5) The:

(A) name;

(B) business address;

(C) residence address; and

(D) employment history; ~~for the five (5) years preceding the date of the application;~~

for each executive officer, key shareholder, and officer or manager who will be in charge of the applicant's licensed activities.

(6) The:

(A) history of material litigation; ~~for the five (5) years preceding the date of the application;~~ and

(B) the history of criminal **indictments,** convictions, ~~for the five (5) years preceding the date of the application;~~ **and guilty**

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or nolo contendere pleas for felonies involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;

for each executive officer, key shareholder, and director of the applicant.

(7) Except as provided in subdivision (8), copies of the applicant's audited financial statements for the current year and, if available, for the preceding two (2) years, including a:

(A) balance sheet;

(B) statement of income or loss;

(C) statement of changes in shareholder equity; and

(D) statement of changes in financial position.

(8) If the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, financial statements for the current year or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the preceding three (3) years may be submitted with the applicant's unaudited financial statements; or

(B) a corporation publicly traded outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted with the applicant's unaudited financial statements.

(9) Copies of filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, not more than one (1) year before the date of filing of the application.

SECTION 77. IC 28-8-4-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26. In addition to the items listed in section 24 of this chapter, if the applicant is not a corporation, the applicant must provide the following:

(1) The:

(A) name;

(B) residence address;

(C) business address;

(D) ~~personal financial statement~~ **federal tax returns with schedules** for the ~~five (5)~~ **three (3)** years preceding the date of the application; and

(E) employment history; ~~for the five (5) years preceding the date of the application;~~

for each principal and each person who will be in charge of the applicant's licensed activities.

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(2) Evidence that the applicant is registered or qualified to do business in Indiana.

(3) The date on which the applicant registered or qualified to do business in Indiana.

(4) The:

(A) history of material litigation; ~~for the five (5) years preceding the date of the application;~~ and

(B) the history of criminal **indictments,** convictions, ~~for the five (5) years preceding the date of the application;~~ **and guilty and nolo contendere pleas for felonies involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;**

for each individual having an ownership interest in the applicant, and each individual who exercises supervisory responsibility with respect to the applicant's activities.

(5) Copies of the applicant's audited financial statements for the current year and, if available, for the preceding two (2) years, including a:

(A) balance sheet;

(B) statement of income or loss; and

(C) statement of changes in financial position.

SECTION 78. IC 28-8-4-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 32. (a) An application must be accompanied by a nonrefundable application fee as fixed by the department under IC 28-11-3-5.

(b) If a license is granted, the application fee constitutes the license fee for the applicant's activities through December 31 of the year in which the **initial** license is granted.

SECTION 79. IC 28-8-4-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 37. The department shall fix an annual fee for renewal of a license under IC 28-11-3-5. The annual fee shall be paid on or before ~~January 1~~ **March 31** of each year.

SECTION 80. IC 28-8-4-38, AS AMENDED BY P.L.10-2006, SECTION 58 AND P.L.57-2006, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 38. (a) A licensee may renew a license by complying with the following:

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

(A) ~~include.~~ **Either:**

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

(ii) if the licensee is a wholly owned subsidiary, the **parent corporation's most recent** consolidated audited annual financial statement ~~of the parent corporation~~ **or the parent corporation's Form 10K reports** filed with the **Securities and Exchange Commission for the previous three (3) years, along with the** licensee's unaudited annual financial statement.

A financial statement required to be submitted under this clause must be prepared by a certified public accountant authorized to do business in the United States in accordance with AICPA Statements on Standards for Accounting and Review Services (SSARS). A financial statement not covering the immediately preceding twelve (12) month period is not considered the most recent statement for purposes of license renewal under this section.

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

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

(D) A list of the licensee's permissible investments. ~~and~~

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

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

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(b) A licensee that:

(1) does not:

(A) file:

(i) a renewal report; or ~~pay the renewal fee~~

(ii) any financial statements required by subsection (a)(1)(A);

by the renewal filing deadline set by the director; ~~and~~ **or**

(B) pay the renewal fee by March 31 of each year; and

(2) has not been granted an extension of time ~~to do so~~ by the ~~director~~ **department to meet the requirements described in subdivision (1);**

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

(c) The director may, for good cause shown, waive any requirement of this section.

SECTION 81. IC 28-8-4-40.5, AS ADDED BY P.L.57-2006, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 40.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:

(1) Any business, other than the business of money transmission under this chapter, will be conducted by the licensee or another person, **other than an authorized delegate that is not under common control with the applicant,** at any location in Indiana in which the licensee conducts the business of money transmission under this chapter.

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

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

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

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

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subdivision (1), in the licensee's next application for a renewal license under section 38 of this chapter.

SECTION 82. IC 28-8-4-40.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 40.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:**

(1) The licensee, or any individual described in section 25(6) or 26(4) of this chapter, is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(2) The licensee, or any individual described in section 25(6) or 26(4) of this chapter, has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 24(5)(B), 25(6)(B), or 26(4)(B) of this chapter, whichever applies:

(1) not later than thirty (30) days after the licensee or individual described in section 25(6) or 26(4) of this chapter:

(A) has been put on notice of the indictment; or

(B) has been convicted of or pleaded guilty or nolo contendere to the felony;

whichever applies; or

(2) if the licensee's next license renewal fee under section 37 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 37 of this chapter.

SECTION 83. IC 28-8-4-47 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 47. (a) Notwithstanding any other provision of law, all information or reports obtained by the director from an applicant, a licensee, or an authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including: ~~but not limited to:~~

(1) all information contained in or related to:

(A) examination;

(B) investigation;

(C) operation; or

(D) condition reports prepared by, on behalf of, or for the use of the director; or

(2) financial statements, balance sheets, or authorized delegate

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information;

are confidential and may not be disclosed or distributed outside the department by the director or any officer or employee of the department, except as provided in subsection (b).

(b) The director may provide for the release of information to representatives of: ~~state or federal.~~

(1) financial institution supervisory agencies;

(2) law enforcement agencies; or

(3) prosecutorial agencies or offices;

~~that~~ **of a state (as defined in IC 28-2-17-19), the United States, or a foreign country. An agency or office that receives information from the director under this subsection** shall maintain the confidentiality of the information as described in IC 28-1-2-30.

(c) Nothing in this section shall prohibit the director from releasing to the public a list of persons licensed under this chapter or from releasing aggregated financial data on such licensees.

SECTION 84. IC 28-8-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) This chapter does not apply to a financial institution organized under IC 28 or federal law.

(b) This chapter does not apply to persons engaged in the business of cashing checks if:

(1) the transaction is incidental to the retail sale of goods or services; and

(2) consideration (as defined in section 3 **of this chapter**) for cashing checks does not exceed the greater of:

(A) ~~one~~ **two** percent ~~(1%)~~ **(2%)** of the face amount of the check; or

~~(B) one dollar ($1).~~

(B) two dollars ($2).

SECTION 85. IC 28-8-5-11, AS AMENDED BY P.L.57-2006, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) A person shall not engage in the business of cashing checks for consideration without first obtaining a license.

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

(1) The following information pertaining to the applicant:

(A) Name.

(B) Residence address.

(C) Business address.

(2) The following information pertaining to corporate directors of the applicant, officers of the applicant, owners of the applicant (if

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a proprietorship), and partners of the applicant, if applicable:

(A) Name.

(B) Residence address.

(C) Business address.

(D) Whether the person:

(i) is, at the time of the application, under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or

(ii) has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

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

(A) the nature of the other business;

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

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

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

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

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

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

SECTION 86. IC 28-8-5-12, AS AMENDED BY P.L.57-2006, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) The department shall determine the financial responsibility, business experience, character, and general fitness of the applicant before issuing the license.

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

(1) an applicant who is an individual has been convicted of a felony **involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;** or

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

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

(1) the time of application;

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(2) the time of renewal of the licensee's license; or
(3) any other time considered necessary by the director.

(d) For purposes of subsection (c), evidence of compliance may include:
(1) criminal background checks, including a national criminal history check by the Federal Bureau of Investigation;
(2) credit histories; and
(3) other background checks considered necessary by the director.

SECTION 87. IC 28-8-5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. **(a)** Except as otherwise provided in this chapter, a licensee may not charge check cashing fees in excess of the ~~greater~~ **lesser** of: ~~five~~
(1) one hundred dollars ~~($5)~~ **($100)** or;
(2) ten percent (10%) of the face amount of a check.

(b) Except as provided in this chapter, a licensee or the licensee's agent may not accept multiple checks from a:
(1) person;
(2) person's spouse; or
(3) person's agent;
drawn on the person's account with the intent that the licensee may collect multiple or increased fees for cashing the checks.

SECTION 88. IC 28-8-5-18.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 18.4. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:**
(1) The licensee, or any individual described in section 11(b)(2) of this chapter, is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.
(2) The licensee, or any individual described in section 11(b)(2) of this chapter, has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 11(b)(2)(D) of this chapter:
(1) not later than thirty (30) days after the licensee or individual described in section 11(b)(2) of this chapter:
(A) has been put on notice of the indictment; or
(B) has been convicted of or pleaded guilty or nolo

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contendere to the felony;

whichever applies; or

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

SECTION 89. IC 28-10-1-1, AS AMENDED BY P.L.57-2006, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect ~~January 1, 2006.~~ **December 31, 2006.**

SECTION 90. IC 28-11-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. **(a)** The department of financial institutions is established.

(b) The department:

(1) is an independent agency in the executive branch of state government; and

(2) exercises essential public functions.

(c) The expenses of the department in administering the financial institutions subject to the department's oversight are paid by financial institutions through fees established by the department under IC 28-11-3-5.

(d) Subject to subsection (e), the department's regulatory and budgetary functions are not subject to oversight by the following:

(1) The office of management and budget (notwithstanding IC 4-3-22-14).

(2) The budget agency (notwithstanding IC 4-12-1).

(3) The state personnel department (notwithstanding IC 4-15-1.8).

(4) The Indiana department of administration (notwithstanding IC 4-13-1).

(5) The office of technology (notwithstanding IC 4-13.1).

(e) The department's funds, accounts, and financial affairs shall be examined biennially by the state board of accounts under IC 5-11-1-9(c).

SECTION 91. IC 28-11-1-3, AS AMENDED BY P.L.57-2006, SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The ultimate authority for and the powers, duties, management, and control of the department are vested in the following seven (7) members:

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

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

(A) ~~Two (2)~~ **Three (3)** members must have practical experience at the executive level of a:

(i) state chartered bank;

(ii) state chartered savings association; or

(iii) state chartered savings bank.

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

~~(C)~~ **(B)** One (1) member must have practical experience at the executive level as a lender licensed under IC 24-4.5.

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

~~(E)~~ **(D)** One (1) member must be appointed with due regard for the consumer, agricultural, industrial, and commercial interests of Indiana.

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

SECTION 92. IC 28-11-1-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. The members may by resolution establish policies and procedures in order to facilitate:

(1) the supervision of financial institutions by the department; **and**

(2) the licensing and regulation of persons and entities by the department under:

(A) this title; and

(B) IC 24.

SECTION 93. IC 28-11-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. All assignments, deeds, instruments, notices, orders, rules, and other documents of the department shall be ~~(1)~~ executed in the name of "The Department of Financial Institutions" by the director or, in case of the director's absence or disability, by:

~~(A)~~ **(1)** the chairman;

~~(B) the vice chairman;~~ **(2) an officer elected by the members;** or

~~(C)~~ **(3)** an employee of the department designated in writing by the director or the chairman. ~~and~~

~~(2) attested by the secretary.~~

SECTION 94. IC 28-11-1-15 IS ADDED TO THE INDIANA

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CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 15. If the governor:**

(1) declares, under IC 10-14-3-12, a state of emergency in all or part of Indiana; or

(2) in the absence of a declaration under subdivision (1), gives prior approval to the director;

the director is authorized to take necessary and appropriate action to establish or preserve safe and sound methods of banking and to safeguard the interests of depositors, debtors, consumers, and creditors.

SECTION 95. IC 28-11-2-3, AS AMENDED BY P.L.141-2005, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. **(a)** The director, on behalf of the department, shall employ qualified individuals as assistants, deputies, supervisors, and other necessary employees. **Individuals employed by the director are not subject to job classifications or compensation schedules established under IC 4-15.** The technical or professional qualification of an applicant shall be determined by examination, by professional rating, or as the director determines. **Salaries and benefits for employees of the department shall be:**

(1) established by the members, upon recommendation of the director; and

(2) paid from the financial institutions fund established by section 9 of this chapter.

In making a recommendation under subdivision (1), the director may recommend salaries and benefits substantially equivalent to those paid by the Federal Deposit Insurance Corporation or other federal agencies that supervise financial institutions.

(b) The director may ~~retain~~ **enter into contracts, including contracts for** the services of a qualified independent contractor to assist the department in the examination process under this article. **Notwithstanding IC 4-13-2-14.1,** contracts executed under this section ~~must comply with state contracting laws and the contracting policies and procedures of the Indiana department of administration.~~ **are not subject to the approval of:**

(1) the attorney general;

(2) the director of the budget agency; or

(3) the commissioner of the Indiana department of administration.

SECTION 96. IC 28-11-2-6.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6.1. (a) The members, the**

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director, and the employees of the department are:

(1) under the jurisdiction of, and subject to the rules adopted by, the state ethics commission; and

(2) subject to all other ethics rules and requirements that apply to the executive branch of state government.

(b) The department may adopt additional ethics rules and requirements that:

(1) apply to the members, the director, and the employees of the department;

(2) are not less stringent than the rules adopted by the state ethics commission; and

(3) are consistent with state law.

SECTION 97. IC 28-11-2-6.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6.2. Except as otherwise provided by law, the department is subject to the following:**

(1) IC 5-14-1.5.

(2) IC 5-15-3.

SECTION 98. IC 28-11-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. The director may disclose or make available to a:

(1) state or federal law enforcement agency;

(2) state or federal financial institution supervisory agency;

(3) state or federal prosecutorial agency; ~~or~~

(4) private insurer of deposit accounts or share accounts of a financial institution; **or**

(5) state or federal agency responsible for licensing, registering, chartering, or supervising any regulated:

(A) business; or

(B) nonprofit activity;

confidential information described under IC 28-1-2-30 **or pertaining to a regulated business or nonprofit activity.**

SECTION 99. IC 28-11-4-3, AS AMENDED BY P.L.57-2006, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) If the director determines that a director, an officer, or an employee of a financial institution has:

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

(2) engaged or participated in an unsafe or unsound practice in

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connection with the financial institution;

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

(4) been ~~charged in a complaint, an indictment, or an information with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one (1) year under federal law or the law of a state,~~ **convicted of, has pleaded guilty or nolo contendere to, or is under indictment for, a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;**

the director, subject to subsection (b), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any financial institution, or an order both removing the person and prohibiting the person's participation.

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

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

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

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

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

(c) A person ~~convicted of a.(1) felony, or(2) crime involving dishonesty or breach of trust,~~ **who:**

(1) is under indictment for;

(2) has been convicted of; or

(3) has pleaded guilty or nolo contendere to;

a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction may not serve as a director, an officer, or an employee of a financial institution, or serve in any similar capacity, unless the person obtains the written consent of the department.

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

SECTION 100. IC 28-12-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) This section applies only to a corporation that is **organized or reorganized under Indiana law and is** any of the following:

(1) A bank and trust company.
(2) A bank.
(3) A ~~stock~~ savings bank.
(4) A trust company.
(5) A savings association.
(6) An industrial loan and investment company.
(7) A credit union.
(8) A corporate fiduciary.
(9) A bank of discount and deposit.
(10) A loan and trust and safe deposit company.

(b) The department shall determine the minimum amount of the capital of a corporation organized or reorganized under this title after giving consideration to:

(1) the potential deposit liability to be anticipated, in the case of a proposed new corporation; or
(2) the existing deposit liability, **in the case** of a corporation to be reorganized.

SECTION 101. IC 28-12-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) This section applies only to a corporation that is **organized or reorganized under Indiana law and is** any of the following:

(1) A bank and trust company.
(2) A bank.
(3) A ~~stock~~ savings bank.
(4) A trust company.
(5) A savings association.
(6) An industrial loan and investment company.
(7) A credit union.
(8) A corporate fiduciary.
(9) A bank of discount and deposit.
(10) A loan and trust and safe deposit company.

(b) Notwithstanding section 1 of this chapter, the amount of capital stock of a corporation to be organized under this title shall be one

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hundred dollars ($100) if an existing corporation will be merged into or otherwise acquired by the corporation for which application has been made.

(c) The new corporation may not transact business before the merger except as incidental to the merger.

(d) Before completion of the merger, the department may conduct any examination into the affairs and records of any party to the merger, as determined by the director to be necessary.

~~(d)~~ **(e)** Upon completion of the merger, the resulting corporation is subject to the paid-in capital requirement of ~~section 1 of this chapter.~~ **this title.**

SECTION 102. IC 28-13-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) The department may, if the department considers it necessary for the protection of the depositors, require any bank or trust company, savings bank, or savings association to increase the ~~sound~~ capital **and surplus** or to reduce the amount of the deposits of the bank or trust company, savings bank, or savings association. The department shall, in arriving at a decision whether to order a bank or trust company, savings bank, or savings association to increase the ~~sound~~ capital **and surplus** or reduce the amount of the deposits for the protection of the depositors of the bank or trust company, savings bank, or savings association, take into consideration the following:

(1) Quality of management.
(2) Liquidity of assets.
(3) History of earnings and the retention of earnings.
(4) Quality and character of ownership.
(5) Burden of occupancy expenses.
(6) Potential volatility of deposit structure.
(7) Quality of operating procedures.
(8) Capacity to meet present and future needs of the area served, considering its competition.

(b) If the department determines that an increase in the ~~sound~~ capital **and surplus** or decrease in the deposits is necessary, the department shall enter an order fixing the amount of the increase or decrease. The order shall be complied with within the time period fixed by the order.

(c) The department may require a corporate fiduciary to increase its capital. In deciding whether to order a corporate fiduciary to increase its capital, the department shall take into consideration the following:

(1) Quality of management.
(2) Liquidity of assets.

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(3) History of earnings and the retention of earnings.
(4) Quality and character of ownership.
(5) Burden of occupancy expenses.
(6) Quality of operating procedures.
(7) Ability to administer fiduciary accounts in a prudent manner consistent with applicable laws or regulations.

(d) If the department determines that an increase in capital **under subsection (c)** is necessary, the department shall enter an order fixing the amount of the increase. The order must be complied with within the period fixed by the order.

SECTION 103. IC 28-15-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) As used in this section, "rights and privileges" means the power:

(1) to:
(A) create;
(B) deliver;
(C) acquire; or
(D) sell;
a product, a service, or an investment that is available to or offered by; or
(2) to engage in other activities authorized for;
federal savings associations domiciled in Indiana.

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

(c) A savings association that intends to exercise any rights and privileges that are:
(1) granted to federal savings associations; but
(2) not authorized for savings associations under:
(A) the Indiana Code (except for this section); or
(B) a rule adopted under IC 4-22-2;
shall submit a letter to the department, describing in detail the requested rights and privileges granted to federal savings associations that the savings association intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter.

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

(e) The department ~~through its members,~~ may ~~prohibit the savings~~

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~~association from exercising~~ **deny** the requested rights and privileges ~~only~~ if the ~~members find~~ **department finds** that:

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

(2) the exercise of the requested rights and privileges by the savings association would adversely affect the safety and soundness of the savings association;

(3) the exercise of the requested rights and privileges by the savings association would result in an unacceptable curtailment of consumer protection; or

(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the savings association.

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

(1) the ~~members~~ **department** must:

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

(B) convene a hearing;

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

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

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

(h) ~~Whenever, in compliance with this section,~~ **If** a savings association ~~exercises~~ **receives approval to exercise the requested** rights and privileges granted to national savings associations domiciled in Indiana, **the department shall determine by order whether** all savings associations may exercise the same rights and privileges. ~~if~~ **In making the determination required by this subsection,** the department ~~by order determines~~ **must ensure** that the exercise of the rights and privileges by all savings associations ~~would~~ **will** not:

(1) adversely affect their safety and soundness; **or**

(2) unduly constrain Indiana consumer protection provisions.

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(i) If the department denies the request of a savings association under this section to exercise any rights and privileges that are granted to national savings associations, the company may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the savings association is located.

SECTION 104. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 559, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Insurance and Financial Institutions.

(Reference is to SB 559 as introduced.)

LONG, Chairperson

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