
HOUSE BILL No. 1360

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-12; IC 6-1.1; IC 6-3-1-3.5; IC 6-3.1-32; IC 23-2-5; IC 24-4.5; IC 24-5-0.5; IC 24-9; IC 25-34.1-8-10; IC 27-7-3-15.5; IC 32-29-7-3; IC 34-30-2.

Synopsis: Mortgage lending issues. Requires the homeowner protection unit (unit) within the attorney general's office to establish a toll free telephone number to receive calls from persons having information about suspected fraudulent transactions and practices concerning residential real estate transactions. Requires the unit to share information reported by callers to the telephone number with appropriate law enforcement and regulatory agencies. Requires the department of local government finance to revise the sales disclosure form for real estate conveyances to include: (1) the application forms for the homestead credit and the mortgage property tax exemption; and (2) the name and license or certificate number of each regulated professional involved in the transaction. Requires county assessors to submit sales disclosure form data to the department of insurance. Requires the department of insurance to establish and maintain a data base that serves as a central repository for the sales disclosure form data submitted. Requires the department of insurance to make the information in the data base available to appropriate law enforcement and regulatory agencies. Requires a closing agent to: (1) provide to a customer, at least 48 hours before the closing of a home loan transaction, a form prescribed by the department of local government finance that describes certain property tax deductions and credits; (2) require the customer, at the time of the closing, to complete and sign either a sales disclosure form, in the case of a first lien purchase money mortgage transaction, or the application form for the mortgage property
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Effective: Upon passage; July 1, 2008; January 1, 2009.

Bardon

January 16, 2008, read first time and referred to Committee on Financial Institutions.



tax exemption, in the case of a refinancing; and (3) collect and file the completed and signed form with the appropriate county official. Provides that at the time of the closing, the closing agent must: (1) inform the customer of certain other property tax deductions for which the customer may be eligible; (2) offer to provide the customer with the forms necessary for the person to claim the deductions; and (3) provide to the customer any forms requested by the customer. For purposes of the adjusted gross income tax, excludes from a taxpayer's adjusted gross income an amount equal to the amount of any debt forgiven by a creditor with respect to mortgaged property of the taxpayer that is sold during the taxable year: (1) in a foreclosure proceeding; or (2) for an amount less than the amount of the outstanding mortgage obligation. Provides a credit against the financial institutions tax or the adjusted gross income tax for a taxpayer that: (1) issues or brokers at least 25 home loans during the taxable year; and (2) incurs certain qualified home loan costs. Provides that the amount of the credit is the lesser of: (1) the taxpayer's qualified home loan costs; or (2) the amount of the taxpayer's tax liability. Specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers may include a national criminal history background check by the Federal Bureau of Investigation (FBI). Specifies that the securities commissioner (commissioner) shall require each: (1) equitable owner of a loan brokerage business; (2) director, manager, or officer of an applicant for licensure as a loan broker; and (3) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. Prohibits the commissioner from releasing the results of a national criminal history background check to a private entity. Allows the commissioner to designate a multistate automated licensing system and repository (system) as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers. Increases the amount of the bond that a licensed loan broker must maintain with the commissioner from \$50,000 to \$100,000. Eliminates the exemption from the loan broker statute for persons authorized to make loans on behalf of, or insured by, certain federal agencies. Specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower. Prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable. Prohibits a person from performing specified acts in connection with a contract for the services of a loan broker. Provides that first lien mortgage transactions are subject to regulation under the Uniform Consumer Credit Code (UCCC). Provides that not more than 25% of the credit service charge or loan finance charge for a mortgage transaction may be precomputed. Provides that for a first lien mortgage transaction, the parties may contract for a delinquency charge of not more than five percent (5%) of the contracted payment amount. Provides that prepayment penalties and fees may not be charged with respect to a subprime mortgage transaction. Requires a creditor or mortgage servicer to respond to a written offer made in connection with a proposed short sale of mortgaged property not later than 10 calendar days after the date of the offer. Provides that a creditor that offers a nontraditional or subprime mortgage transaction must exercise prudent underwriting practices to determine the debtor's reasonable ability to repay the mortgage transaction at its fully indexed rate. Requires a creditor that offers a subprime mortgage transaction to establish an

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escrow account for the payment of real estate taxes and insurance owed in connection with the subprime mortgage. Requires a person regularly engaged as a creditor in mortgage transactions to post a bond of at least \$300,000 with the department of financial institutions. For an adjustable rate mortgage, requires a creditor to provide a one page disclosure document that provides the following information: (1) The mortgage transaction's fully indexed rate. (2) The maximum monthly payment that could be required under the terms of the mortgage transaction, including amounts owed for taxes and insurance, if the creditor will establish an escrow account for taxes and insurance. Provides that a creditor is not liable to the debtor or any other person if the estimate of monthly taxes and insurance provided in the disclosure document differs from the actual taxes and insurance owed at any time during the mortgage. Specifies that a violation of the: (1) home loan practices act; or (2) the provisions of the UCCC concerning mortgage transactions; is a deceptive act subject to action by the attorney general. For a deceptive act involving home loan practices or mortgage transactions, increases: (1) the damages that may be awarded to an aggrieved consumer; and (2) the amount of the civil penalties that may be imposed on a violator. Provides that any civil penalties collected by the attorney general shall be deposited in the home owner protection unit account in the general fund. Prohibits a creditor from recommending or issuing to a prospective borrower: (1) a stated income or no documentation loan; or (2) a home loan if the creditor does not have reasonable grounds to believe the home loan is suitable for the prospective borrower based on a reasonable inquiry into the prospective borrower's creditworthiness. Provides that if a creditor conducts a reasonable inquiry, the creditor is not liable for determining that a home loan is suitable for a borrower, if the borrower later defaults on the home loan issued by the creditor. Requires creditors to offer: (1) a temporary forbearance, subject to terms agreed upon by the creditor and the borrower; (2) a payment plan; or (3) an option for the refinancing, restructuring, or workout of existing indebtedness; whenever a home loan becomes 60 days past due. Requires settlement service providers to make closing documents available to borrowers at least 48 hours before the closing. Increases the statutory damages that may be recovered by a person aggrieved by a violation of the home loan practices act (act) from: (1) two times; to (2) four times; the amount of the finance charges under the contract. Enhances the crime involving a knowing or intentional violation of the act from a Class A misdemeanor to a Class D felony. Increases the civil penalty for the violation of: (1) the act; or (2) an injunction issued to enjoin a violation of the act; from \$10,000 to \$20,000. Requires the real estate appraiser licensure and certification board to require each initial applicant for licensure or certification as a real estate appraiser to submit fingerprints for a national criminal history background check by the FBI. Prohibits the board from releasing the results of a national criminal history background check to a private entity. For a mortgage foreclosure proceeding initiated after June 30, 2008, requires: (1) the clerk of the court to certify to the sheriff a copy of the judgment or decree not later than five business days after the praecipe is filed; and (2) the sheriff to conduct a sale of the property not later than 90 days after receipt of the judgment or decree. Requires various state agencies to form the mortgage lending and fraud prevention task force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud. Requires the

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Indiana housing and community development authority to provide, not later than November 1, 2008, a report to the legislative council that includes the following: (1) An identification of new and existing funding sources that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions, in order to prevent the foreclosure of the homes secured by the mortgages. (2) A plan for the rehabilitation of areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures. Requires the securities commissioner and the director of the department of financial institutions to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC. Repeals provisions that exclude mortgage transactions from the UCCC. Makes conforming changes.

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Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1360



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

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

1 SECTION 1. IC 4-6-12-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 3.5. (a) Not later than July 1, 2008, the unit**
4 **shall establish a toll free telephone number to receive calls from**
5 **persons having information about suspected fraudulent:**
6 (1) **mortgage lending practices;**
7 (2) **real estate appraisals; or**
8 (3) **other practices;**
9 **involving residential real estate transactions.**
10 (b) **The toll free telephone number required by this section shall**
11 **be staffed by:**
12 (1) **employees or investigators of the unit who have knowledge**
13 **of the laws concerning:**
14 (A) **mortgage lending practices;**
15 (B) **real estate appraisals; or**
16 (C) **other practices;**
17 **involving residential real estate transactions;**



- 1 **(2) representatives of any of the entities described in section**
- 2 **4(a)(8) through 4(a)(10) of this chapter who have knowledge**
- 3 **of the laws concerning:**
- 4 **(A) mortgage lending practices;**
- 5 **(B) real estate appraisals; or**
- 6 **(C) other practices;**
- 7 **involving residential real estate transactions; or**
- 8 **(3) a combination of persons described in subdivisions (1) and**
- 9 **(2).**

10 **The attorney general shall designate persons to staff the toll free**
 11 **telephone number as required by this subsection.**

12 **(c) The persons designated by the attorney general under**
 13 **subsection (b) to staff the toll free telephone number required by**
 14 **this section shall ensure that any information received from callers**
 15 **to the telephone number is shared with any entity described in**
 16 **section 4 of this chapter that has jurisdiction over the matter**
 17 **reported. The unit shall establish uniform procedures for:**

- 18 **(1) responding to calls received;**
- 19 **(2) protecting:**
 - 20 **(A) the anonymity of callers who wish to report**
 - 21 **information anonymously; or**
 - 22 **(B) the identity of callers who request that their identity**
 - 23 **not be disclosed;**
- 24 **(3) documenting and verifying information reported by**
- 25 **callers; and**
- 26 **(4) transmitting reported information to the appropriate**
- 27 **entities described in section 4 of this chapter.**

28 **(d) The unit shall publicize the availability of the toll free**
 29 **telephone number established under this section in a manner**
 30 **reasonably designed to reach members of the public.**

31 **SECTION 2. IC 4-6-12-9, AS AMENDED BY P.L.64-2007,**
 32 **SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 33 **JULY 1, 2008]: Sec. 9. (a) The homeowner protection unit account**
 34 **within the general fund is established to support the operations of the**
 35 **unit. The account is administered by the attorney general.**

- 36 **(b) The homeowner protection unit account consists of:**
 - 37 **(1) fees collected under IC 24-9-9; and**
 - 38 **(2) civil penalties collected under IC 24-5-0.5-4(l)(3).**

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

41 **(d) The treasurer of state shall invest the money in the homeowner**
 42 **protection unit account not currently needed to meet the obligations of**

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1 the account in the same manner as other public money may be invested.

2 (e) Money in the homeowner protection unit account at the end of
3 a state fiscal year does not revert to the state general fund.

4 SECTION 3. IC 6-1.1-5.5-3, AS AMENDED BY P.L.219-2007,
5 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2008]: Sec. 3. (a) For purposes of this section, "party"
7 includes:

8 (1) a seller of property that is exempt under the seller's ownership;
9 or

10 (2) a purchaser of property that is exempt under the purchaser's
11 ownership;

12 from property taxes under IC 6-1.1-10.

13 (b) Before filing a conveyance document with the county auditor
14 under IC 6-1.1-5-4, all the parties to the conveyance must do the
15 following:

16 (1) Complete and sign a sales disclosure form as prescribed by the
17 department of local government finance under section 5 of this
18 chapter. All the parties may sign one (1) form, or if all the parties
19 do not agree on the information to be included on the completed
20 form, each party may sign and file a separate form.

21 (2) Before filing a sales disclosure form with the county auditor,
22 submit the sales disclosure form to the county assessor. The
23 county assessor must review the accuracy and completeness of
24 each sales disclosure form submitted immediately upon receipt of
25 the form and, if the form is accurate and complete, stamp the form
26 as eligible for filing with the county auditor and return the form
27 to the appropriate party for filing with the county auditor. If
28 multiple forms are filed in a short period, the county assessor
29 shall process the forms as quickly as possible. For purposes of this
30 subdivision, a sales disclosure form is considered to be accurate
31 and complete if:

32 (A) the county assessor does not have substantial evidence
33 when the form is reviewed under this subdivision that
34 information in the form is inaccurate; and

35 (B) the form:

36 (i) substantially conforms to the sales disclosure form
37 prescribed by the department of local government finance
38 under section 5 of this chapter; and

39 (ii) is submitted to the county assessor in a format usable to
40 the county assessor.

41 (3) File the sales disclosure form with the county auditor.

42 (c) Except as provided in subsection (d), the auditor shall forward

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1 each sales disclosure form to the county assessor. The county assessor
2 shall retain the forms for five (5) years. The county assessor shall
3 forward the sales disclosure form data to:

4 (1) the department of local government finance and the legislative
5 services agency in an electronic format specified jointly by the
6 department of local government finance and the legislative
7 services agency; and

8 (2) **the department of insurance, in an electronic format**
9 **specified by the department of insurance, for inclusion in the**
10 **data base maintained by the department of insurance under**
11 **IC 27-7-3-15.5.**

12 The county assessor shall forward a copy of the sales disclosure forms
13 to the township assessors in the county. The forms may be used by the
14 county assessing officials, the department of local government finance,
15 and the legislative services agency for the purposes established in
16 IC 6-1.1-4-13.6, sales ratio studies, equalization, adoption of rules
17 under IC 6-1.1-31-3 and IC 6-1.1-31-6, and any other authorized
18 purpose.

19 (d) In a county containing a consolidated city, the auditor shall
20 forward the sales disclosure form to the appropriate township assessor.
21 The township assessor shall forward the sales disclosure form to the
22 department of local government finance and the legislative services
23 agency in an electronic format specified jointly by the department of
24 local government finance and the legislative services agency. The
25 forms may be used by the county assessing officials, the department of
26 local government finance, and the legislative services agency for the
27 purposes established in IC 6-1.1-4-13.6, sales ratio studies,
28 equalization, adoption of rules under IC 6-1.1-31-3 and IC 6-1.1-31-6,
29 and any other authorized purpose.

30 (e) If a sales disclosure form includes the telephone number or
31 Social Security number of a party, the telephone number or Social
32 Security number is confidential.

33 (f) County assessing officials and other local officials may not
34 establish procedures or requirements concerning sales disclosure forms
35 that substantially differ from the procedures and requirements of this
36 chapter.

37 SECTION 4. IC 6-1.1-5.5-5, AS AMENDED BY P.L.154-2006,
38 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 UPON PASSAGE]: Sec. 5. (a) The department of local government
40 finance shall prescribe a sales disclosure form for use under this
41 chapter. The form prescribed by the department of local government
42 finance must include at least the following: ~~information.~~

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- 1 (1) The key number of the parcel (as defined in IC 6-1.1-1-8.5).
- 2 (2) Whether the entire parcel is being conveyed.
- 3 (3) The address of the property.
- 4 (4) The date of the execution of the form.
- 5 (5) The date the property was transferred.
- 6 (6) Whether the transfer includes an interest in land or
- 7 improvements, or both.
- 8 (7) Whether the transfer includes personal property.
- 9 (8) An estimate of any personal property included in the transfer.
- 10 (9) The name, address, and telephone number of:
- 11 (A) each transferor and transferee; and
- 12 (B) the person that prepared the form.
- 13 (10) The mailing address to which the property tax bills or other
- 14 official correspondence should be sent.
- 15 (11) The ownership interest transferred.
- 16 (12) The classification of the property (as residential, commercial,
- 17 industrial, agricultural, vacant land, or other).
- 18 (13) The total price actually paid or required to be paid in
- 19 exchange for the conveyance, whether in terms of money,
- 20 property, a service, an agreement, or other consideration, but
- 21 excluding tax payments and payments for legal and other services
- 22 that are incidental to the conveyance.
- 23 (14) The terms of seller provided financing, such as interest rate,
- 24 points, type of loan, amount of loan, and amortization period, and
- 25 whether the borrower is personally liable for repayment of the
- 26 loan.
- 27 (15) Any family or business relationship existing between the
- 28 transferor and the transferee.
- 29 **(16) The form prescribed by the department of local**
- 30 **government finance under IC 6-1.1-12-2 to allow a person to**
- 31 **claim the deduction provided by IC 6-1.1-12-1.**
- 32 **(17) The form prescribed by the department of local**
- 33 **government finance under IC 6-1.1-20.9-3 to allow a person**
- 34 **to claim the credit provided by IC 6-1.1-20.9-2.**
- 35 **(18) The name and mailing address of the transferee.**
- 36 **(19) The name and mailing address of the transferor.**
- 37 **(20) To the extent determinable, the following information**
- 38 **concerning any of the following persons that have**
- 39 **participated in or assisted with the transaction, or that will**
- 40 **participate in or assist with the transaction:**
- 41 **(A) The name and license number (under IC 23-2-5) of**
- 42 **each loan brokerage business involved in the transaction.**

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1 **(B) The name and registration number (under IC 23-2-5)**
2 **of each originator involved in the transaction.**
3 **(C) The name and license number (under IC 25-34.1) of**
4 **each:**
5 **(i) principal broker; and**
6 **(ii) salesperson or broker-salesperson, if any;**
7 **involved in the transaction.**
8 **(D) The name and certificate number (under IC 27-7-3) of**
9 **each title insurance company involved in the transaction.**
10 **(E) The name and license number (under IC 27-1-15.6) of**
11 **each title insurance agent involved in the transaction.**
12 **(F) The name and:**
13 **(i) license or certificate number (under IC 25-34.1-3-8)**
14 **of each licensed or certified real estate appraiser; or**
15 **(ii) license number (under IC 25-34.1) of each broker;**
16 **who appraises the property that is the subject of the**
17 **transaction.**
18 **(G) If the transfer of the property involves a mortgage**
19 **transaction (as defined in IC 24-4.5-8-104):**
20 **(i) the name of the mortgagee; and**
21 **(ii) if the mortgagee is required to be licensed under**
22 **IC 24-4.5-3-502, the license number of the mortgagee.**
23 ~~(+6)~~ **(21) Other information as required by the department of local**
24 **government finance to carry out this chapter.**
25 If a form under this section includes the telephone number or the Social
26 Security number of a party, the telephone number or the Social Security
27 number is confidential.
28 (b) The instructions for completing the form described in subsection
29 (a) must include the information described in ~~IC 6-1.1-12-43(c)(1)~~.
30 **IC 6-1.1-12-43(b)(1).**
31 SECTION 5. IC 6-1.1-12-2, AS AMENDED BY P.L.183-2007,
32 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 UPON PASSAGE]: Sec. 2. (a) Except as provided in section 17.8 of
34 this chapter **and subject to subsection (d)**, a person who desires to
35 claim the deduction provided by section 1 of this chapter must file a
36 statement in duplicate, on forms prescribed by the department of local
37 government finance, with the auditor of the county in which the real
38 property, mobile home not assessed as real property, or manufactured
39 home not assessed as real property is located. With respect to real
40 property, the statement must be filed during the twelve (12) months
41 before June 11 of each year for which the person wishes to obtain the
42 deduction. With respect to a mobile home that is not assessed as real

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1 property or a manufactured home that is not assessed as real property,
 2 the statement must be filed during the twelve (12) months before
 3 March 31 of each year for which the individual wishes to obtain the
 4 deduction. The statement may be filed in person or by mail. If mailed,
 5 the mailing must be postmarked on or before the last day for filing. In
 6 addition to the statement required by this subsection, a contract buyer
 7 who desires to claim the deduction must submit a copy of the recorded
 8 contract or recorded memorandum of the contract, which must contain
 9 a legal description sufficient to meet the requirements of IC 6-1.1-5,
 10 with the first statement that the buyer files under this section with
 11 respect to a particular parcel of real property. Upon receipt of the
 12 statement and the recorded contract or recorded memorandum of the
 13 contract, the county auditor shall assign a separate description and
 14 identification number to the parcel of real property being sold under the
 15 contract.

16 (b) The statement referred to in subsection (a) must be verified
 17 under penalties for perjury, and the statement must contain the
 18 following information:

- 19 (1) The balance of the person's mortgage or contract indebtedness
 20 on the assessment date of the year for which the deduction is
 21 claimed.
- 22 (2) The assessed value of the real property, mobile home, or
 23 manufactured home.
- 24 (3) The full name and complete residence address of the person
 25 and of the mortgagee or contract seller.
- 26 (4) The name and residence of any assignee or bona fide owner or
 27 holder of the mortgage or contract, if known, and if not known,
 28 the person shall state that fact.
- 29 (5) The record number and page where the mortgage, contract, or
 30 memorandum of the contract is recorded.
- 31 (6) A brief description of the real property, mobile home, or
 32 manufactured home which is encumbered by the mortgage or sold
 33 under the contract.
- 34 (7) If the person is not the sole legal or equitable owner of the real
 35 property, mobile home, or manufactured home, the exact share of
 36 the person's interest in it.
- 37 (8) The name of any other county in which the person has applied
 38 for a deduction under this section and the amount of deduction
 39 claimed in that application.

40 (c) The authority for signing a deduction application filed under this
 41 section may not be delegated by the real property, mobile home, or
 42 manufactured home owner or contract buyer to any person except upon

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1 an executed power of attorney. The power of attorney may be contained
2 in the recorded mortgage, contract, or memorandum of the contract, or
3 in a separate instrument.

4 **(d) For use in transactions involving a first lien purchase money**
5 **mortgage for residential property, the department of local**
6 **government finance shall combine the form prescribed under**
7 **subsection (a) with the form prescribed by the department under**
8 **IC 6-1.1-5.5-5. With respect to a single family residential:**

9 **(1) first lien purchase money mortgage transaction; or**

10 **(2) refinancing transaction;**

11 **described in section 43 of this chapter, a closing agent may file the**
12 **form prescribed by the department under this section with the**
13 **appropriate county official on behalf of the person who desires to**
14 **claim the deduction provided by section 1 of this chapter, as**
15 **provided in section 43 of this chapter.**

16 SECTION 6. IC 6-1.1-12-43 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 43. (a) For
18 purposes of this section:

19 (1) "benefit" refers to:

20 (A) a deduction under section 1, 9, 11, 13, 14, 16, 17.4, 26, 29,
21 31, 33, or 34 of this chapter; or

22 (B) the homestead credit under IC 6-1.1-20.9-2.

23 (2) "closing agent" means a person that closes a transaction;

24 (3) "customer" means an individual who obtains a loan in a
25 transaction; and

26 (4) "transaction" means a single family residential:

27 (A) first lien purchase money mortgage transaction; or

28 (B) refinancing transaction.

29 ~~(b) Before closing a transaction after December 31, 2004, a closing~~
30 ~~agent must provide to the customer the form referred to in subsection~~
31 ~~(c):~~

32 ~~(c) Before June 1, 2004, (b)~~ The department of local government
33 finance shall prescribe ~~the a~~ form to be provided by closing agents to
34 customers under subsection ~~(b): (d)(1)~~. The department shall make the
35 form available to closing agents, county assessors, county auditors, and
36 county treasurers in hard copy and electronic form. County assessors,
37 county auditors, and county treasurers shall make the form available to
38 the general public. The form must:

39 (1) on one (1) side:

40 (A) list each benefit;

41 (B) list the eligibility criteria for each benefit; and

42 (C) indicate that a new application for a deduction under

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1 section 1 of this chapter is required when residential real
 2 property is refinanced;
 3 (2) on the other side indicate:
 4 (A) each action by; and
 5 (B) each type of documentation from;
 6 the customer required to file for each benefit; and
 7 (3) be printed in one (1) of two (2) or more colors prescribed by
 8 the department of local government finance that distinguish the
 9 form from other documents typically used in a closing. ~~referred to~~
 10 ~~in subsection (b).~~
 11 ~~(d)~~ (c) A closing agent:
 12 (1) may reproduce the form referred to in subsection ~~(c)~~; (b);
 13 (2) in reproducing the form, must use a print color prescribed by
 14 the department of local government finance; and
 15 (3) is not responsible for the content of the form referred to in
 16 subsection ~~(c)~~ (b) and shall be held harmless by the department
 17 of local government finance from any liability for the content of
 18 the form.
 19 **(d) A closing agent must do the following with respect to a**
 20 **transaction that is closed after June 30, 2008:**
 21 **(1) Provide to the customer the form prescribed by the**
 22 **department under subsection (b) not later than forty-eight**
 23 **(48) hours before the closing of the transaction, in accordance**
 24 **with IC 24-9-4.5.**
 25 **(2) At the time of closing:**
 26 **(A) provide the customer with:**
 27 **(i) the sales disclosure form prescribed by the**
 28 **department under IC 6-1.1-5.5-5, if the transaction**
 29 **involves a first lien purchase money mortgage**
 30 **transaction; or**
 31 **(ii) the form prescribed by the department under section**
 32 **2(a) of this chapter to allow a person to claim the**
 33 **deduction provided by section 1 of this chapter, if the**
 34 **transaction is a refinancing transaction;**
 35 **(B) subject to subsection (f), require the customer to**
 36 **complete and sign the form provided under clause (A); and**
 37 **(C) subject to subsection (f), collect the form signed and**
 38 **completed under clause (B) for filing under subsection (e).**
 39 **(3) At the time of the closing:**
 40 **(A) inform the customer of the deductions available under**
 41 **sections 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, and 34 of this**
 42 **chapter, as described in the form prescribed by the**

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- 1 department under subsection (b);
- 2 **(B) offer to provide the customer with any forms**
- 3 **prescribed by the department to allow a person to claim**
- 4 **the deductions described in clause (A); and**
- 5 **(C) provide to the customer any forms requested by the**
- 6 **customer under clause (B).**

7 **(e) This subsection applies to a transaction that is closed after**
 8 **June 30, 2008. The closing agent shall file a form completed and**
 9 **signed by the customer under subsection (d)(2)(B) as follows:**

- 10 **(1) In the case of a first lien purchase money mortgage**
- 11 **transaction, the closing agent shall file the signed sales**
- 12 **disclosure form with the appropriate county assessor and**
- 13 **county auditor in accordance with IC 6-1.1-5.5-3.**
- 14 **(2) In the case of a refinancing transaction, the closing agent**
- 15 **shall file the signed mortgage deduction form in accordance**
- 16 **with section 2(a) of this chapter.**

17 ~~(e)~~ **(f) A closing agent to which this section applies shall document**
 18 **its the closing agent's compliance with this section with respect to**
 19 **each transaction in the form of verification of compliance signed by the**
 20 **customer. At the time of the closing, a customer may refuse to:**

- 21 **(1) complete and sign the form provided to the customer**
- 22 **under subsection (d)(2)(A); or**
- 23 **(2) return the form to the closing agent for filing under**
- 24 **subsection (e).**

25 **If the customer refuses to complete, sign, or return the form, as**
 26 **described in subsection (d)(2), the customer shall sign a statement**
 27 **indicating the customer's refusal.**

28 ~~(f)~~ **(g) A closing agent is subject to a civil penalty of twenty-five**
 29 **dollars (\$25) for each instance in which the closing agent fails to**
 30 **comply with this section with respect to a customer. The penalty:**

- 31 **(1) may be enforced by the state agency that has administrative**
- 32 **jurisdiction over the closing agent in the same manner that the**
- 33 **agency enforces the payment of fees or other penalties payable to**
- 34 **the agency; and**
- 35 **(2) shall be paid into the property tax replacement fund.**

36 **(h) A closing agent is not liable for any other damages claimed by**
 37 **a customer because of:**

- 38 **(1) the closing agent's mere failure to provide ~~the~~ an appropriate**
- 39 **document to the customer under this section; or**
- 40 **(2) any determination made with respect to a customer's**
- 41 **eligibility for a benefit.**

42 ~~(g)~~ **(i) The state agency that has administrative jurisdiction over a**

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1 closing agent shall:

2 (1) examine the closing agent to determine compliance with this

3 section; and

4 (2) impose and collect penalties under subsection ~~(f)~~: **(g)**.

5 SECTION 7. IC 6-1.1-20.9-3, AS AMENDED BY P.L.183-2007,

6 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

7 UPON PASSAGE]: Sec. 3. (a) **Subject to subsection (e)**, an individual

8 who desires to claim the credit provided by section 2 of this chapter

9 must file a certified statement in duplicate, on forms prescribed by the

10 department of local government finance, with the auditor of the county

11 in which the homestead is located. The statement shall include the

12 parcel number or key number of the real estate and the name of the

13 city, town, or township in which the real estate is located. With respect

14 to real property, the statement must be filed during the twelve (12)

15 months before June 11 of the year prior to the first year for which the

16 person wishes to obtain the credit for the homestead. With respect to

17 a mobile home that is not assessed as real property or a manufactured

18 home that is not assessed as real property, the statement must be filed

19 during the twelve (12) months before March 31 of the first year for

20 which the individual wishes to obtain the credit. The statement may be

21 filed in person or by mail. If mailed, the mailing must be postmarked

22 on or before the last day for filing. The statement applies for that first

23 year and any succeeding year for which the credit is allowed.

24 (b) The certified statement referred to in subsection (a) shall contain

25 the name of any other county and township in which the individual

26 owns or is buying real property.

27 (c) If an individual who is receiving the credit provided by this

28 chapter changes the use of the individual's real property, so that part or

29 all of that real property no longer qualifies for the homestead credit

30 provided by this chapter, the individual must file a certified statement

31 with the auditor of the county, notifying the auditor of the change of

32 use within sixty (60) days after the date of that change. An individual

33 who changes the use of the individual's real property and fails to file

34 the statement required by this subsection is liable for the amount of the

35 credit the individual was allowed under this chapter for that real

36 property.

37 (d) An individual who receives the credit provided by section 2 of

38 this chapter for property that is jointly held with another owner in a

39 particular year and remains eligible for the credit in the following year

40 is not required to file a statement to reapply for the credit following the

41 removal of the joint owner if:

42 (1) the individual is the sole owner of the property following the

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- 1 death of the individual's spouse;
- 2 (2) the individual is the sole owner of the property following the
- 3 death of a joint owner who was not the individual's spouse; or
- 4 (3) the individual is awarded sole ownership of property in a
- 5 divorce decree.

6 **(e) For use in transactions involving a conveyance (as defined in**
 7 **IC 6-1.1-5.5-1), the department of local government finance shall**
 8 **combine the form prescribed under subsection (a) with the form**
 9 **prescribed by the department under IC 6-1.1-5.5-5. With respect**
 10 **to a transaction described in IC 6-1.1-12-43(a)(4), a closing agent**
 11 **may file the form prescribed by the department under this section**
 12 **with the appropriate county official on behalf of the person who**
 13 **desires to claim the credit provided by section 2 of this chapter, as**
 14 **provided in IC 6-1.1-12-43.**

15 SECTION 8. IC 6-3-1-3.5, AS AMENDED BY P.L.144-2007,
 16 SECTION 3, AS AMENDED BY P.L.211-2007, SECTION 19, AND
 17 AS AMENDED BY P.L.223-2007, SECTION 1, IS CORRECTED
 18 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JANUARY 1, 2009]: Sec. 3.5. When used in this article, the term
 20 "adjusted gross income" shall mean the following:

21 (a) In the case of all individuals, "adjusted gross income" (as
 22 defined in Section 62 of the Internal Revenue Code), modified as
 23 follows:

- 24 (1) Subtract income that is exempt from taxation under this article
- 25 by the Constitution and statutes of the United States.
- 26 (2) Add an amount equal to any deduction or deductions allowed
- 27 or allowable pursuant to Section 62 of the Internal Revenue Code
- 28 for taxes based on or measured by income and levied at the state
- 29 level by any state of the United States.
- 30 (3) Subtract one thousand dollars (\$1,000), or in the case of a
- 31 joint return filed by a husband and wife, subtract for each spouse
- 32 one thousand dollars (\$1,000).
- 33 (4) Subtract one thousand dollars (\$1,000) for:
- 34 (A) each of the exemptions provided by Section 151(c) of the
- 35 Internal Revenue Code;
- 36 (B) each additional amount allowable under Section 63(f) of
- 37 the Internal Revenue Code; and
- 38 (C) the spouse of the taxpayer if a separate return is made by
- 39 the taxpayer and if the spouse, for the calendar year in which
- 40 the taxable year of the taxpayer begins, has no gross income
- 41 and is not the dependent of another taxpayer.
- 42 (5) Subtract:

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- 1 (A) for taxable years beginning after December 31, 2004, one
- 2 thousand five hundred dollars (\$1,500) for each of the
- 3 exemptions allowed under Section 151(c)(1)(B) of the Internal
- 4 Revenue Code (as effective January 1, 2004); and
- 5 (B) five hundred dollars (\$500) for each additional amount
- 6 allowable under Section 63(f)(1) of the Internal Revenue Code
- 7 if the adjusted gross income of the taxpayer, or the taxpayer
- 8 and the taxpayer's spouse in the case of a joint return, is less
- 9 than forty thousand dollars (\$40,000).
- 10 This amount is in addition to the amount subtracted under
- 11 subdivision (4).
- 12 (6) Subtract an amount equal to the lesser of:
- 13 (A) that part of the individual's adjusted gross income (as
- 14 defined in Section 62 of the Internal Revenue Code) for that
- 15 taxable year that is subject to a tax that is imposed by a
- 16 political subdivision of another state and that is imposed on or
- 17 measured by income; or
- 18 (B) two thousand dollars (\$2,000).
- 19 (7) Add an amount equal to the total capital gain portion of a
- 20 lump sum distribution (as defined in Section 402(e)(4)(D) of the
- 21 Internal Revenue Code) if the lump sum distribution is received
- 22 by the individual during the taxable year and if the capital gain
- 23 portion of the distribution is taxed in the manner provided in
- 24 Section 402 of the Internal Revenue Code.
- 25 (8) Subtract any amounts included in federal adjusted gross
- 26 income under Section 111 of the Internal Revenue Code as a
- 27 recovery of items previously deducted as an itemized deduction
- 28 from adjusted gross income.
- 29 (9) Subtract any amounts included in federal adjusted gross
- 30 income under the Internal Revenue Code which amounts were
- 31 received by the individual as supplemental railroad retirement
- 32 annuities under 45 U.S.C. 231 and which are not deductible under
- 33 subdivision (1).
- 34 (10) Add an amount equal to the deduction allowed under Section
- 35 221 of the Internal Revenue Code for married couples filing joint
- 36 returns if the taxable year began before January 1, 1987.
- 37 (11) Add an amount equal to the interest excluded from federal
- 38 gross income by the individual for the taxable year under Section
- 39 128 of the Internal Revenue Code if the taxable year began before
- 40 January 1, 1985.
- 41 (12) Subtract an amount equal to the amount of federal Social
- 42 Security and Railroad Retirement benefits included in a taxpayer's

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1 federal gross income by Section 86 of the Internal Revenue Code.
 2 (13) In the case of a nonresident taxpayer or a resident taxpayer
 3 residing in Indiana for a period of less than the taxpayer's entire
 4 taxable year, the total amount of the deductions allowed pursuant
 5 to subdivisions (3), (4), (5), and (6) shall be reduced to an amount
 6 which bears the same ratio to the total as the taxpayer's income
 7 taxable in Indiana bears to the taxpayer's total income.

8 (14) In the case of an individual who is a recipient of assistance
 9 under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7,
 10 subtract an amount equal to that portion of the individual's
 11 adjusted gross income with respect to which the individual is not
 12 allowed under federal law to retain an amount to pay state and
 13 local income taxes.

14 (15) In the case of an eligible individual, subtract the amount of
 15 a Holocaust victim's settlement payment included in the
 16 individual's federal adjusted gross income.

17 (16) For taxable years beginning after December 31, 1999,
 18 subtract an amount equal to the portion of any premiums paid
 19 during the taxable year by the taxpayer for a qualified long term
 20 care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the
 21 taxpayer's spouse, or both.

22 (17) Subtract an amount equal to the lesser of:

23 (A) for a taxable year:

24 (i) including any part of 2004, the amount determined under
 25 subsection (f); and

26 (ii) beginning after December 31, 2004, two thousand five
 27 hundred dollars (\$2,500); or

28 (B) the amount of property taxes that are paid during the
 29 taxable year in Indiana by the individual on the individual's
 30 principal place of residence.

31 (18) Subtract an amount equal to the amount of a September 11
 32 terrorist attack settlement payment included in the individual's
 33 federal adjusted gross income.

34 (19) Add or subtract the amount necessary to make the adjusted
 35 gross income of any taxpayer that owns property for which bonus
 36 depreciation was allowed in the current taxable year or in an
 37 earlier taxable year equal to the amount of adjusted gross income
 38 that would have been computed had an election not been made
 39 under Section 168(k) of the Internal Revenue Code to apply bonus
 40 depreciation to the property in the year that it was placed in
 41 service.

42 (20) Add an amount equal to any deduction allowed under

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1 Section 172 of the Internal Revenue Code.

2 (21) Add or subtract the amount necessary to make the adjusted
3 gross income of any taxpayer that placed Section 179 property (as
4 defined in Section 179 of the Internal Revenue Code) in service
5 in the current taxable year or in an earlier taxable year equal to
6 the amount of adjusted gross income that would have been
7 computed had an election for federal income tax purposes not
8 been made for the year in which the property was placed in
9 service to take deductions under Section 179 of the Internal
10 Revenue Code in a total amount exceeding twenty-five thousand
11 dollars (\$25,000).

12 (22) Add an amount equal to the amount that a taxpayer claimed
13 as a deduction for domestic production activities for the taxable
14 year under Section 199 of the Internal Revenue Code for federal
15 income tax purposes.

16 *(23) Subtract an amount equal to the amount of the taxpayer's*
17 *qualified military income that was not excluded from the*
18 *taxpayer's gross income for federal income tax purposes under*
19 *Section 112 of the Internal Revenue Code.*

20 ~~(23)~~ **(24) Subtract income that is:**

21 *(A) exempt from taxation under IC 6-3-2-21.7; and*

22 *(B) included in the individual's federal adjusted gross income*
23 *under the Internal Revenue Code.*

24 **(25) For taxable years beginning after December 31, 2008,**
25 **subtract an amount equal to the amount of any debt forgiven**
26 **by a creditor in a mortgage transaction (as defined in**
27 **IC 24-4.5-8-104) with respect to mortgaged property of the**
28 **taxpayer that is sold during the taxable year:**

29 **(A) in a foreclosure proceeding; or**

30 **(B) for an amount less than the amount of the outstanding**
31 **mortgage obligation;**

32 **to the extent that the debt forgiven is included in the**
33 **taxpayer's federal adjustable gross income.**

34 (b) In the case of corporations, the same as "taxable income" (as
35 defined in Section 63 of the Internal Revenue Code) adjusted as
36 follows:

37 (1) Subtract income that is exempt from taxation under this article
38 by the Constitution and statutes of the United States.

39 (2) Add an amount equal to any deduction or deductions allowed
40 or allowable pursuant to Section 170 of the Internal Revenue
41 Code.

42 (3) Add an amount equal to any deduction or deductions allowed

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- 1 or allowable pursuant to Section 63 of the Internal Revenue Code
- 2 for taxes based on or measured by income and levied at the state
- 3 level by any state of the United States.
- 4 (4) Subtract an amount equal to the amount included in the
- 5 corporation's taxable income under Section 78 of the Internal
- 6 Revenue Code.
- 7 (5) Add or subtract the amount necessary to make the adjusted
- 8 gross income of any taxpayer that owns property for which bonus
- 9 depreciation was allowed in the current taxable year or in an
- 10 earlier taxable year equal to the amount of adjusted gross income
- 11 that would have been computed had an election not been made
- 12 under Section 168(k) of the Internal Revenue Code to apply bonus
- 13 depreciation to the property in the year that it was placed in
- 14 service.
- 15 (6) Add an amount equal to any deduction allowed under Section
- 16 172 of the Internal Revenue Code.
- 17 (7) Add or subtract the amount necessary to make the adjusted
- 18 gross income of any taxpayer that placed Section 179 property (as
- 19 defined in Section 179 of the Internal Revenue Code) in service
- 20 in the current taxable year or in an earlier taxable year equal to
- 21 the amount of adjusted gross income that would have been
- 22 computed had an election for federal income tax purposes not
- 23 been made for the year in which the property was placed in
- 24 service to take deductions under Section 179 of the Internal
- 25 Revenue Code in a total amount exceeding twenty-five thousand
- 26 dollars (\$25,000).
- 27 (8) Add an amount equal to the amount that a taxpayer claimed as
- 28 a deduction for domestic production activities for the taxable year
- 29 under Section 199 of the Internal Revenue Code for federal
- 30 income tax purposes.
- 31 (9) Add to the extent required by IC 6-3-2-20 the amount of
- 32 intangible expenses (as defined in IC 6-3-2-20) and any directly
- 33 related intangible interest expenses (as defined in IC 6-3-2-20) for
- 34 the taxable year that reduced the corporation's taxable income (as
- 35 defined in Section 63 of the Internal Revenue Code) for federal
- 36 income tax purposes.
- 37 *(10) Add an amount equal to any deduction for dividends paid (as*
- 38 *defined in Section 561 of the Internal Revenue Code) to*
- 39 *shareholders of a captive real estate investment trust (as defined*
- 40 *in section 34.5 of this chapter).*
- 41 ~~(10)~~ **(11) Subtract income that is:**
- 42 *(A) exempt from taxation under IC 6-3-2-21.7; and*

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(B) included in the corporation's taxable income under the Internal Revenue Code.

(c) In the case of life insurance companies (as defined in Section 816(a) of the Internal Revenue Code) that are organized under Indiana law, the same as "life insurance company taxable income" (as defined in Section 801 of the Internal Revenue Code), adjusted as follows:

- (1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.
- (2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.
- (3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.
- (4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.
- (5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.
- (6) Add an amount equal to any deduction allowed under Section 172 or Section 810 of the Internal Revenue Code.
- (7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).
- (8) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.
- (9) Subtract income that is:*

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1 (A) exempt from taxation under IC 6-3-2-21.7; and
2 (B) included in the insurance company's taxable income under
3 the Internal Revenue Code.

4 (d) In the case of insurance companies subject to tax under Section
5 831 of the Internal Revenue Code and organized under Indiana law, the
6 same as "taxable income" (as defined in Section 832 of the Internal
7 Revenue Code), adjusted as follows:

8 (1) Subtract income that is exempt from taxation under this article
9 by the Constitution and statutes of the United States.

10 (2) Add an amount equal to any deduction allowed or allowable
11 under Section 170 of the Internal Revenue Code.

12 (3) Add an amount equal to a deduction allowed or allowable
13 under Section 805 or Section 831(c) of the Internal Revenue Code
14 for taxes based on or measured by income and levied at the state
15 level by any state.

16 (4) Subtract an amount equal to the amount included in the
17 company's taxable income under Section 78 of the Internal
18 Revenue Code.

19 (5) Add or subtract the amount necessary to make the adjusted
20 gross income of any taxpayer that owns property for which bonus
21 depreciation was allowed in the current taxable year or in an
22 earlier taxable year equal to the amount of adjusted gross income
23 that would have been computed had an election not been made
24 under Section 168(k) of the Internal Revenue Code to apply bonus
25 depreciation to the property in the year that it was placed in
26 service.

27 (6) Add an amount equal to any deduction allowed under Section
28 172 of the Internal Revenue Code.

29 (7) Add or subtract the amount necessary to make the adjusted
30 gross income of any taxpayer that placed Section 179 property (as
31 defined in Section 179 of the Internal Revenue Code) in service
32 in the current taxable year or in an earlier taxable year equal to
33 the amount of adjusted gross income that would have been
34 computed had an election for federal income tax purposes not
35 been made for the year in which the property was placed in
36 service to take deductions under Section 179 of the Internal
37 Revenue Code in a total amount exceeding twenty-five thousand
38 dollars (\$25,000).

39 (8) Add an amount equal to the amount that a taxpayer claimed as
40 a deduction for domestic production activities for the taxable year
41 under Section 199 of the Internal Revenue Code for federal
42 income tax purposes.

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- (9) Subtract income that is:*
 - (A) exempt from taxation under IC 6-3-2-21.7; and*
 - (B) included in the insurance company's taxable income under the Internal Revenue Code.*

(e) In the case of trusts and estates, "taxable income" (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code) adjusted as follows:

- (1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.
- (2) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the federal adjusted gross income of the estate of a victim of the September 11 terrorist attack or a trust to the extent the trust benefits a victim of the September 11 terrorist attack.
- (3) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.
- (4) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.
- (5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).
- (6) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.
- (7) Subtract income that is:*
 - (A) exempt from taxation under IC 6-3-2-21.7; and*
 - (B) included in the taxpayer's taxable income under the Internal Revenue Code.*

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1 (f) This subsection applies only to the extent that an individual paid
 2 property taxes in 2004 that were imposed for the March 1, 2002,
 3 assessment date or the January 15, 2003, assessment date. The
 4 maximum amount of the deduction under subsection (a)(17) is equal
 5 to the amount determined under STEP FIVE of the following formula:

6 STEP ONE: Determine the amount of property taxes that the
 7 taxpayer paid after December 31, 2003, in the taxable year for
 8 property taxes imposed for the March 1, 2002, assessment date
 9 and the January 15, 2003, assessment date.

10 STEP TWO: Determine the amount of property taxes that the
 11 taxpayer paid in the taxable year for the March 1, 2003,
 12 assessment date and the January 15, 2004, assessment date.

13 STEP THREE: Determine the result of the STEP ONE amount
 14 divided by the STEP TWO amount.

15 STEP FOUR: Multiply the STEP THREE amount by two
 16 thousand five hundred dollars (\$2,500).

17 STEP FIVE: Determine the sum of the STEP FOUR amount and
 18 two thousand five hundred dollars (\$2,500).

19 SECTION 9. IC 6-3.1-32 IS ADDED TO THE INDIANA CODE
 20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 21 JANUARY 1, 2009]:

22 **Chapter 32. Home Loan Cost Tax Credit**

23 **Sec. 1. This chapter applies only to taxable years beginning after**
 24 **December 31, 2008.**

25 **Sec. 2. As used in this chapter, "approved home ownership**
 26 **education efforts" refers to the following:**

27 **(1) Educational materials that are:**

28 **(A) prepared by or at the expense of a taxpayer;**

29 **(B) designed to inform borrowers or prospective**
 30 **borrowers about:**

31 **(i) the features of, and risks associated with, the home**
 32 **loan products offered by the taxpayer; or**

33 **(ii) the responsibilities and costs associated with home**
 34 **ownership in general; and**

35 **(C) approved by the authority for distribution to Indiana**
 36 **consumers.**

37 **(2) Home ownership counseling services that are:**

38 **(A) conducted by or at the expense of a taxpayer;**

39 **(B) designed to assist borrowers or prospective borrowers**
 40 **in meeting their obligations under a home loan; and**

41 **(C) approved by the authority to be offered to Indiana**
 42 **consumers.**

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1 **Sec. 3.** As used in this chapter, "authority" refers to the Indiana
2 housing and community development authority established by
3 IC 5-20-1-3.

4 **Sec. 4.** As used in this chapter, "borrower" has the meaning set
5 forth in IC 24-9-2-4.

6 **Sec. 5.** As used in this chapter, "home loan" means a loan that
7 is secured by a mortgage or deed of trust on real estate in Indiana
8 on which there is located or will be located at least one (1)
9 structure that:

10 (1) is designed primarily for occupancy of one (1) to four (4)
11 families; and

12 (2) is or will be occupied by a borrower as the borrower's
13 principal dwelling.

14 **Sec. 6.** As used in this chapter, "pass through entity" means:

15 (1) a corporation that is exempt from the adjusted gross
16 income tax under IC 6-3-2-2.8(2);

17 (2) a partnership;

18 (3) a limited liability company; or

19 (4) a limited liability partnership.

20 **Sec. 7.** As used in this chapter, "qualified home loan cost"
21 means any of the following incurred by a taxpayer:

22 (1) Costs incurred for approved home ownership education
23 efforts.

24 (2) The cost of any contribution or grant made to the
25 authority for the mortgage foreclosure counseling and
26 education program under IC 5-20-6-3.

27 **Sec. 8.** As used in this chapter, "state tax liability" means a
28 taxpayer's total tax liability that is incurred under:

29 (1) IC 6-5.5 (financial institutions tax), if the taxpayer is
30 subject to the financial institutions tax; or

31 (2) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax), if
32 the taxpayer is not subject to the financial institutions tax
33 under IC 6-5.5;

34 as computed after the application of the credits that under
35 IC 6-3.1-1-2 are to be applied before the credit provided by this
36 chapter.

37 **Sec. 9.** As used in this chapter, "taxpayer" means a creditor (as
38 defined in IC 24-9-2-6) that:

39 (1) has any state tax liability; and

40 (2) issues or brokers at least twenty-five (25) home loans
41 during the taxable year for which the taxpayer seeks the
42 credit provided by section 10 of this chapter.

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1 **Sec. 10.** A taxpayer that incurs qualified home loan costs during
 2 a taxable year is entitled to a credit against the taxpayer's state tax
 3 liability. The amount of the credit is equal to the lesser of:

4 (1) the amount of the taxpayer's qualified home loan costs
 5 during the taxable year; or

6 (2) the amount of the taxpayer's state tax liability for the
 7 taxable year.

8 **Sec. 11. (a)** To be entitled to a credit for a qualified home loan
 9 cost described in section 7(1) of this chapter, a taxpayer must
 10 request the authority to approve the home ownership education
 11 efforts for which the taxpayer seeks a credit under this chapter.
 12 The request must be made before costs for the home ownership
 13 education efforts are incurred by the taxpayer.

14 **(b)** If the authority determines that the home ownership
 15 education efforts for which the taxpayer seeks a credit under this
 16 chapter meet the rules adopted by the authority under section 15
 17 of this chapter, the authority shall certify to the taxpayer that the
 18 taxpayer's home ownership education efforts are approved by the
 19 authority.

20 **Sec. 12. (a)** If the amount determined under section 10 of this
 21 chapter for a taxpayer in a taxable year exceeds the taxpayer's
 22 state tax liability for that taxable year, the taxpayer may carry the
 23 excess over to the following taxable years. The amount of the credit
 24 carryover from a taxable year shall be reduced to the extent that
 25 the carryover is used by the taxpayer to obtain a credit under this
 26 chapter for any subsequent taxable year. A taxpayer is not entitled
 27 to a carryback.

28 **(b)** A taxpayer is not entitled to a refund of any unused credit.

29 **Sec. 13.** If a pass through entity does not have state income tax
 30 liability against which the tax credit allowed under this chapter
 31 may be applied, a shareholder or partner of the pass through entity
 32 is entitled to a tax credit equal to:

33 (1) the tax credit determined for the pass through entity for
 34 the taxable year; multiplied by

35 (2) the percentage of the pass through entity's distributive
 36 income to which the shareholder or partner is entitled.

37 **Sec. 14.** To receive the credit provided by this chapter, a
 38 taxpayer must claim the credit on the taxpayer's state tax return
 39 or returns in the manner prescribed by the department. The
 40 taxpayer must submit to the department all information that the
 41 department determines is necessary to calculate the credit
 42 provided by this chapter and to determine the taxpayer's eligibility

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1 **for the credit, including any certification received by the taxpayer**
2 **from the authority under section 11(b) of this chapter.**

3 **Sec. 15. The authority shall adopt rules under IC 4-22-2 to**
4 **certify home ownership education efforts under this chapter.**

5 SECTION 10. IC 23-2-5-3, AS AMENDED BY P.L.230-2007,
6 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2008]: Sec. 3. (a) As used in this chapter, "certificate of
8 registration" means a certificate issued by the commissioner
9 authorizing an individual to:

10 (1) engage in origination activities on behalf of a licensee; or

11 (2) **act as a principal manager on behalf of a licensee.**

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

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

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

16 (c) As used in this chapter, "license" means a license issued by the
17 commissioner authorizing a person to engage in the loan brokerage
18 business.

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

21 (e) As used in this chapter, "loan broker" means any person who, in
22 return for any consideration from any source procures, attempts to
23 procure, or assists in procuring, a loan from a third party or any other
24 person, whether or not the person seeking the loan actually obtains the
25 loan. "Loan broker" does not include:

26 (1) any supervised financial organization (as defined in
27 IC 24-4.5-1-301(20)), including a bank, savings bank, trust
28 company, savings association, or credit union;

29 (2) any other financial institution that is:

30 (A) regulated by any agency of the United States or any state;
31 and

32 (B) regularly actively engaged in the business of making
33 consumer loans that are not secured by real estate or taking
34 assignment of consumer sales contracts that are not secured by
35 real estate;

36 (3) any insurance company; or

37 (4) any person arranging financing for the sale of the person's
38 product.

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

41 (g) As used in this chapter, "origination activities" means
42 communication with or assistance of a borrower or prospective

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- 1 borrower in the selection of loan products or terms.
- 2 (h) As used in this chapter, "originator" means a person engaged in
3 origination activities. The term "originator" does not include a person
4 who performs origination activities for any entity that is not a loan
5 broker under subsection (e).
- 6 (i) As used in this chapter, "person" means an individual, a
7 partnership, a trust, a corporation, a limited liability company, a limited
8 liability partnership, a sole proprietorship, a joint venture, a joint stock
9 company, or another group or entity, however organized.
- 10 (j) As used in this chapter, "registrant" means an individual who is
11 registered:
- 12 (1) to engage in origination activities under this chapter; or
13 (2) as a principal manager.
- 14 (k) As used in this chapter, "ultimate equitable owner" means a
15 person who, directly or indirectly, owns or controls ten percent (10%)
16 or more of the equity interest in a loan broker licensed or required to be
17 licensed under this chapter, regardless of whether the person owns or
18 controls the equity interest through one (1) or more other persons or
19 one (1) or more proxies, powers of attorney, or variances.
- 20 (l) As used in this chapter, "principal manager" means an individual
21 who:
- 22 (1) has at least three (3) years of experience:
23 (A) as a loan broker; or
24 (B) in financial services;
25 that is acceptable to the commissioner; and
26 (2) is principally responsible for the supervision and management
27 of the employees and business affairs of a licensee.
- 28 **(m) As used in this chapter, "personal information" includes**
29 **any of the following:**
- 30 **(1) An individual's first and last names or first initial and last**
31 **name.**
- 32 **(2) Any of the following data elements:**
- 33 **(A) A Social Security number.**
34 **(B) A driver's license number.**
35 **(C) A state identification card number.**
36 **(D) A credit card number.**
37 **(E) A financial account number or debit card number in**
38 **combination with a security code, password, or access code**
39 **that would permit access to the person's account.**
- 40 **(3) With respect to an individual, any of the following:**
- 41 **(A) Address.**
42 **(B) Telephone number.**

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1 **(C) Information concerning the individual's:**

2 **(i) income or other compensation;**

3 **(ii) credit history;**

4 **(iii) credit score;**

5 **(iv) assets;**

6 **(v) liabilities; or**

7 **(vi) employment history.**

8 **(n) As used in this chapter, personal information is "encrypted"**
 9 **if the personal information:**

10 **(1) has been transformed through the use of an algorithmic**
 11 **process into a form in which there is a low probability of**
 12 **assigning meaning without use of a confidential process or**
 13 **key; or**

14 **(2) is secured by another method that renders the personal**
 15 **information unreadable or unusable.**

16 **(o) As used in this chapter, personal information is "redacted"**
 17 **if the personal information has been altered or truncated so that**
 18 **not more than the last four (4) digits of:**

19 **(1) a Social Security number;**

20 **(2) a driver's license number;**

21 **(3) a state identification number; or**

22 **(4) an account number;**

23 **are accessible as part of the personal information.**

24 SECTION 11. IC 23-2-5-4, AS AMENDED BY P.L.230-2007,
 25 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2008]: Sec. 4. (a) **A person may not engage in the loan**
 27 **brokerage business in Indiana unless the person first obtains a**
 28 **license from the commissioner.** Any person desiring to engage or
 29 continue in the loan brokerage business shall apply to the
 30 commissioner for a license under this chapter.

31 **(b) An individual may not perform origination activities in**
 32 **Indiana on behalf of a person licensed or required to be licensed**
 33 **under this chapter unless the individual first obtains a certificate**
 34 **of registration from the commissioner.** An individual desiring to be
 35 employed by a licensee to engage in origination activities **on behalf of**
 36 **a person licensed or required to be licensed under this chapter** shall
 37 apply to the commissioner for registration under this chapter.

38 **(c) An individual may not act as a principal manager on behalf**
 39 **of a person licensed or required to be licensed under this chapter**
 40 **unless the individual first obtains a certificate of registration from**
 41 **the commissioner.** Any individual desiring to be employed by a
 42 licensee act as a principal manager **on behalf of a person licensed or**

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1 required to be licensed under this chapter shall apply to the
2 commissioner for registration under this chapter.

3 **(d) The commissioner may request evidence of compliance with**
4 **this section at any of the following times:**

5 **(1) The time of application for an initial:**

6 **(A) license; or**

7 **(B) certificate of registration.**

8 **(2) The time of renewal of a license or certificate of**
9 **registration. However, if the commissioner seeks evidence of**
10 **compliance through a criminal background check described**
11 **in subsection (e), the commissioner must consider:**

12 **(A) the resources and staffing available to the state police**
13 **department to process or conduct a criminal background**
14 **check in a timely manner;**

15 **(B) the length of time that has elapsed since the most**
16 **recent criminal background check was conducted with**
17 **respect to the applicant for renewal; and**

18 **(C) the financial or administrative burdens that a criminal**
19 **background check will place on the applicant for renewal.**

20 **(3) Any other time considered necessary by the commissioner.**

21 **(e) For purposes of subsection (d), evidence of compliance with**
22 **this section may include a criminal background check, including a**
23 **national criminal history background check (as defined in**
24 **IC 10-13-3-12) by the Federal Bureau of Investigation.**

25 SECTION 12. IC 23-2-5-5, AS AMENDED BY P.L.230-2007,
26 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2008]: Sec. 5. (a) An application for license or renewal of a
28 license must contain:

29 (1) consent to service of process under subsection (h);

30 (2) evidence of the bond required in subsection (e);

31 (3) an application fee of four hundred dollars (\$400), plus two
32 hundred dollars (\$200) for each ultimate equitable owner;

33 (4) an affidavit affirming that none of the applicant's ultimate
34 equitable owners, directors, managers, or officers have been
35 convicted, in any jurisdiction, of an offense involving fraud or
36 deception that is punishable by at least one (1) year of
37 imprisonment, unless waived by the commissioner under
38 subsection (f); (i);

39 (5) evidence that the applicant, if the applicant is an individual,
40 has completed the education requirements under section 21 of this
41 chapter;

42 (6) the name and registration number for each originator to be

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- 1 employed by the licensee;
- 2 (7) the name and registration number for each principal manager;
- 3 and
- 4 (8) for each ultimate equitable owner, the following information:
- 5 (1) The name of the ultimate equitable owner.
- 6 (2) The address of the ultimate equitable owner, including the
- 7 home address of the ultimate equitable owner if the ultimate
- 8 equitable owner is an individual.
- 9 (3) The telephone number of the ultimate equitable owner,
- 10 including the home telephone number if the ultimate equitable
- 11 owner is an individual.
- 12 (4) The ultimate equitable owner's Social Security number and
- 13 date of birth, if the ultimate equitable owner is an individual.
- 14 (b) An application for registration as an originator shall be made on
- 15 a registration form prescribed by the commissioner. The application
- 16 must include the following information for the individual that seeks to
- 17 be registered as an originator:
- 18 (1) The name of the individual.
- 19 (2) The home address of the individual.
- 20 (3) The home telephone number of the individual.
- 21 (4) The individual's Social Security number and date of birth.
- 22 (5) The name of the:
- 23 (A) licensee; or
- 24 (B) applicant for licensure;
- 25 for whom the individual seeks to be employed as an originator.
- 26 (6) Consent to service of process under subsection (h).
- 27 (7) Evidence that the individual has completed the education
- 28 requirements described in section 21 of this chapter.
- 29 (8) An application fee of one hundred dollars (\$100).
- 30 (9) All registration numbers previously issued to the individual
- 31 under this chapter, if applicable.
- 32 (c) An application for registration as a principal manager shall be
- 33 made on a registration form prescribed by the commissioner. The
- 34 application must include the following information for the individual
- 35 who seeks to be registered as a principal manager:
- 36 (1) The name of the individual.
- 37 (2) The home address of the individual.
- 38 (3) The home telephone number of the individual.
- 39 (4) The individual's Social Security number and date of birth.
- 40 (5) The name of the:
- 41 (A) licensee; or
- 42 (B) applicant for licensure;

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- 1 for whom the individual seeks to be employed as a principal
2 manager.
- 3 (6) Consent to service of process under subsection (h).
4 (7) Evidence that the individual has completed the education
5 requirements described in section 21 of this chapter.
6 (8) Evidence that the individual has at least three (3) years of
7 experience in the:
8 (A) loan brokerage; or
9 (B) financial services;
10 business.
11 (9) An application fee of two hundred dollars (\$200).
12 (10) All registration numbers previously issued to the individual,
13 if applicable.
- 14 (d) The commissioner shall require an applicant for registration as:
15 (1) an originator under subsection (b); or
16 (2) a principal manager under subsection (c);
17 to pass a written examination prepared and administered by the
18 commissioner or an agent appointed by the commissioner.
- 19 (e) A licensee must maintain a bond satisfactory to the
20 commissioner in the amount of **fifty one hundred** thousand dollars
21 ~~(\$50,000)~~, **(\$100,000)**, which shall be in favor of the state and shall
22 secure payment of damages to any person aggrieved by any violation
23 of this chapter by the licensee.
- 24 (f) The commissioner shall issue a license and license number to an
25 applicant that meets the licensure requirements of this chapter.
26 Whenever the registration provisions of this chapter have been
27 complied with, the commissioner shall issue a certificate of registration
28 and registration number authorizing the registrant to:
29 (1) engage in origination activities; or
30 (2) act as a principal manager;
31 whichever applies.
- 32 (g) Licenses and initial certificates of registration issued by the
33 commissioner are valid until January 1 of the second year after
34 issuance.
- 35 (h) Every applicant for licensure or registration or for renewal of a
36 license or a registration shall file with the commissioner, in such form
37 as the commissioner by rule or order prescribes, an irrevocable consent
38 appointing the secretary of state to be the applicant's agent to receive
39 service of any lawful process in any noncriminal suit, action, or
40 proceeding against the applicant arising from the violation of any
41 provision of this chapter. Service shall be made in accordance with the
42 Indiana Rules of Trial Procedure.

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1 (i) Upon good cause shown, the commissioner may waive the
2 requirements of subsection (a)(4) for one (1) or more of an applicant's
3 ultimate equitable owners, directors, managers, or officers.

4 (j) Whenever an initial or a renewal application for a license or
5 registration is denied or withdrawn, the commissioner shall retain the
6 initial or renewal application fee paid.

7 (k) The commissioner shall require each:

8 (1) equitable owner; ~~and~~

9 **(2) individual described in subsection (a)(4); and**

10 ~~(2)~~ **(3) applicant for registration as:**

11 (A) an originator; or

12 (B) a principal manager;

13 to ~~undergo~~ **submit fingerprints for a national criminal history**
14 **background check at the expense of the (as defined in IC 10-13-3-12)**
15 **by the Federal Bureau of Investigation, for use by the**
16 **commissioner in determining whether the equitable owner, the**
17 **individual described in subsection (a)(4), or the applicant should be**
18 **denied licensure or registration under this chapter for any reason**
19 **set forth in section 10(c) of this chapter. The equitable owner,**
20 **individual described in subsection (a)(4), or applicant shall pay any**
21 **fees or costs associated with the fingerprints and background check**
22 **required under this subsection. The commissioner may not release**
23 **the results of a background check described in this subsection to**
24 **any private entity.**

25 (l) The commissioner may check the qualifications, background,
26 licensing status, and service history of each:

27 (1) equitable owner; ~~and~~

28 **(2) individual described in subsection (a)(4); and**

29 ~~(2)~~ **(3) applicant for registration as:**

30 (A) an originator; or

31 (B) a principal manager;

32 by accessing, upon availability, a multistate automated licensing system
33 for mortgage brokers and originators, including the National Mortgage
34 Licensing Database proposed by the Conference of State Bank
35 Supervisors and the American Association of Residential Mortgage
36 Regulators; **and repository described in section 11(a)(16) of this**
37 **chapter. The equitable owner, the individual described in subsection**
38 **(a)(4), or the applicant shall pay any fees or costs associated with a**
39 **check conducted under this subsection.**

40 SECTION 13. IC 23-2-5-6 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. A licensee may not
42 continue engaging in the loan brokerage business unless the licensee's

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1 license is renewed biennially. A registrant may not continue:
 2 (1) engaging in origination activities; or
 3 (2) acting as a principal manager;
 4 unless the registrant's certificate of registration is renewed biennially.
 5 A licensee shall renew its license ~~and the certificates of registration of~~
 6 ~~its registrant employees~~ by filing with the commissioner, at least thirty
 7 (30) days before the expiration of the ~~registration~~ license, an
 8 application containing any information the commissioner may require
 9 to indicate any material change from the information contained in the
 10 applicant's original application or any previous application. **A**
 11 **registrant may renew the registrant's certificate of registration by**
 12 **filing with the commissioner, at least thirty (30) days before the**
 13 **expiration of the registration, an application containing any**
 14 **information the commissioner may require to indicate any material**
 15 **change from the information contained in the applicant's original**
 16 **application or any previous application.**

17 SECTION 14. IC 23-2-5-10, AS AMENDED BY P.L.230-2007,
 18 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2008]: Sec. 10. (a) Whenever it appears to the commissioner
 20 that a person has engaged in or is about to engage in an act or a practice
 21 constituting a violation of this chapter or a rule or an order under this
 22 chapter, the commissioner may investigate and may issue, with a prior
 23 hearing if there exists no substantial threat of immediate irreparable
 24 harm or without a prior hearing, if there exists a substantial threat of
 25 immediate irreparable harm, orders and notices as the commissioner
 26 determines to be in the public interest, including cease and desist
 27 orders, orders to show cause, and notices. After notice and hearing, the
 28 commissioner may enter an order of rescission, restitution, or
 29 disgorgement, including interest at the rate of eight percent (8%) per
 30 year, directed to a person who has violated this chapter or a rule or
 31 order under this chapter.

32 (b) Upon the issuance of an order or notice without a prior hearing
 33 by the commissioner under subsection (a), the commissioner shall
 34 promptly notify the respondent and, if the subject of the order or notice
 35 is a registrant, the licensee for whom the registrant is employed:

- 36 (1) that the order or notice has been issued;
- 37 (2) of the reasons the order or notice has been issued; and
- 38 (3) that upon the receipt of a written request the matter will be set
 39 down for a hearing to commence within fifteen (15) business days
 40 after receipt of the request unless the respondent consents to a
 41 later date.

42 If a hearing is not requested and not ordered by the commissioner, an

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1 order remains in effect until it is modified or vacated by the
2 commissioner. If a hearing is requested or ordered, the commissioner,
3 after notice of an opportunity for hearing, may modify or vacate the
4 order or extend it until final determination.

5 (c) The commissioner may deny **an application for an initial or a**
6 **renewal license or registration, and may** suspend or revoke the
7 license of a licensee or the registration of a registrant if **the applicant,**
8 the licensee, the registrant, or an ultimate equitable owner of **an**
9 **applicant or of** a licensee:

10 (1) fails to maintain the bond required under section 5 of this
11 chapter;

12 (2) has, within the most recent ten (10) years:

13 (A) been the subject of an adjudication or a determination by:

14 (i) a court with jurisdiction; or

15 (ii) an agency or administrator that regulates securities,
16 commodities, banking, financial services, insurance, real
17 estate, or the real estate appraisal industry;

18 in Indiana or in any other jurisdiction; and

19 (B) been found, after notice and opportunity for hearing, to
20 have violated the securities, commodities, banking, financial
21 services, insurance, real estate, or real estate appraisal laws of
22 Indiana or any other jurisdiction;

23 (3) has:

24 (A) been denied the right to do business in the securities,
25 commodities, banking, financial services, insurance, real
26 estate, or real estate appraisal industry; or

27 (B) had the person's authority to do business in the securities,
28 commodities, banking, financial services, insurance, real
29 estate, or real estate appraisal industry revoked or suspended;
30 by Indiana or by any other state, federal, or foreign governmental
31 agency or self regulatory organization;

32 (4) is insolvent;

33 (5) has violated any provision of this chapter;

34 (6) has knowingly filed with the commissioner any document or
35 statement that:

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

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

38 (C) contains a representation that becomes false after the filing
39 but during the term of a license or certificate of registration as
40 provided in subsection (i);

41 (7) has:

42 (A) been convicted, within ten (10) years before the date of the

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- 1 application, renewal, or review, of any crime involving fraud
 2 or deceit; or
 3 (B) had a felony conviction (as defined in IC 35-50-2-1(b))
 4 within five (5) years before the date of the application,
 5 renewal, or review;
 6 (8) if the person is a licensee or principal manager, has failed to
 7 reasonably supervise the person's originators or employees to
 8 ensure their compliance with this chapter;
 9 (9) is on the most recent tax warrant list supplied to the
 10 commissioner by the department of state revenue; or
 11 (10) has engaged in dishonest or unethical practices in the loan
 12 broker business, as determined by the commissioner.
- 13 (d) The commissioner may do either of the following:
- 14 (1) Censure:
- 15 (A) a licensee;
 16 (B) an officer, a director, or an ultimate equitable owner of a
 17 licensee;
 18 (C) a registrant; or
 19 (D) any other person;
 20 who violates or causes a violation of this chapter.
- 21 (2) Permanently bar any person described in subdivision (1) from
 22 being:
- 23 (A) licensed or registered under this chapter; or
 24 (B) employed by or affiliated with a person licensed or
 25 registered under this chapter;
 26 if the person violates or causes a violation of this chapter.
- 27 (e) The commissioner may not enter a final order:
- 28 (1) denying, suspending, or revoking the license of a licensee or
 29 the registration of a registrant; or
 30 (2) imposing other sanctions;
 31 without prior notice to all interested parties, opportunity for a hearing,
 32 and written findings of fact and conclusions of law. However, the
 33 commissioner may by summary order deny, suspend, or revoke a
 34 license or certificate of registration pending final determination of any
 35 proceeding under this section or before any proceeding is initiated
 36 under this section. Upon the entry of a summary order, the
 37 commissioner shall promptly notify all interested parties that the
 38 summary order has been entered, of the reasons for the summary order,
 39 and that upon receipt by the commissioner of a written request from a
 40 party, the matter will be set for hearing to commence within fifteen
 41 (15) business days after receipt of the request. If no hearing is
 42 requested and none is ordered by the commissioner, the order remains

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

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

7 (g) If a registrant seeks to transfer the registrant's registration to
 8 another licensee who desires to have the registrant engage in
 9 origination activities or serve as a principal manager, whichever
 10 applies, the registrant shall, before the registrant conducts origination
 11 activities or serves as a principal manager for the new employer,
 12 submit to the commissioner, on a form prescribed by the commissioner,
 13 a registration application, as required by section 5 of this chapter.

14 (h) If the employment of a registrant is terminated, whether:

15 (1) voluntarily by the registrant; or

16 (2) by the licensee employing the registrant;

17 the licensee that employed the registrant shall, not later than five (5)
 18 days after the termination, notify the commissioner of the termination
 19 and the reasons for the termination.

20 (i) If a material fact or statement included in an application under
 21 this chapter changes after the application has been submitted, the
 22 applicant shall provide written notice to the commissioner of the
 23 change. The commissioner may revoke or refuse to renew the license
 24 or registration of any person who:

25 (1) is required to submit a written notice under this subsection
 26 and fails to provide the required notice within two (2) business
 27 days after the person discovers or should have discovered the
 28 change; or

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

31 SECTION 15. IC 23-2-5-11, AS AMENDED BY P.L.48-2006,
 32 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2008]: Sec. 11. (a) The commissioner may do the following:

34 (1) Adopt rules under IC 4-22-2 to implement this chapter.

35 (2) Make investigations and examinations:

36 (A) in connection with any application for licensure or for
 37 registration of a licensee or registrant or with any license or
 38 certificate of registration already granted; or

39 (B) whenever it appears to the commissioner, upon the basis
 40 of a complaint or information, that reasonable grounds exist
 41 for the belief that an investigation or examination is necessary
 42 or advisable for the more complete protection of the interests

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- 1 of the public.
- 2 (3) Charge as costs of investigation or examination all reasonable
- 3 expenses, including a per diem prorated upon the salary of the
- 4 commissioner or employee and actual traveling and hotel
- 5 expenses. All reasonable expenses are to be paid by the party or
- 6 parties under investigation or examination if the party has violated
- 7 this chapter.
- 8 (4) Issue notices and orders, including cease and desist notices
- 9 and orders, after making an investigation or examination under
- 10 subdivision (2). The commissioner may also bring an action on
- 11 behalf of the state to enjoin a person from violating this chapter.
- 12 The commissioner shall notify the person that an order or notice
- 13 has been issued, the reasons for it, and that a hearing will be set
- 14 within fifteen (15) days after the commissioner receives a written
- 15 request from the person requesting a hearing.
- 16 (5) Sign all orders, official certifications, documents, or papers
- 17 issued under this chapter or delegate the authority to sign any of
- 18 those items to a deputy.
- 19 (6) Hold and conduct hearings.
- 20 (7) Hear evidence.
- 21 (8) Conduct inquiries with or without hearings.
- 22 (9) Receive reports of investigators or other officers or employees
- 23 of the state of Indiana or of any municipal corporation or
- 24 governmental subdivision within the state.
- 25 (10) Administer oaths, or cause them to be administered.
- 26 (11) Subpoena witnesses, and compel them to attend and testify.
- 27 (12) Compel the production of books, records, and other
- 28 documents.
- 29 (13) Order depositions to be taken of any witness residing within
- 30 or without the state. The depositions shall be taken in the manner
- 31 prescribed by law for depositions in civil actions and made
- 32 returnable to the commissioner.
- 33 (14) Order that each witness appearing under the commissioner's
- 34 order to testify before the commissioner shall receive the fees and
- 35 mileage allowances provided for witnesses in civil cases.
- 36 (15) Provide interpretive opinions or issue determinations that the
- 37 commissioner will not institute a proceeding or an action under
- 38 this chapter against a specified person for engaging in a specified
- 39 act, practice, or course of business if the determination is
- 40 consistent with this chapter. The commissioner may adopt rules
- 41 to establish fees for individuals requesting an interpretive opinion
- 42 or a determination under this subdivision. A person may not

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1 request an interpretive opinion or a determination concerning an
2 activity that:

- 3 (A) occurred before; or
 - 4 (B) is occurring on;
- 5 the date the opinion or determination is requested.

6 **(16) Subject to subsection (f), designate a multistate**
7 **automated licensing system and repository, established and**
8 **operated by a third party, to serve as the sole entity**
9 **responsible for:**

- 10 **(A) processing applications for:**
 - 11 **(i) licenses and certificates of registration under this**
 - 12 **chapter; and**
 - 13 **(ii) renewals of licenses and certificates of registration**
 - 14 **under this chapter; and**
- 15 **(B) performing other services that the commissioner**
- 16 **determines are necessary for the orderly administration of**
- 17 **the division's licensing and registration system.**

18 **A multistate automated licensing system and repository**
19 **described in this subdivision may include the National**
20 **Mortgage Licensing System established by the Conference of**
21 **State Bank Supervisors and the American Association of**
22 **Residential Mortgage Regulators. The commissioner may take**
23 **any action necessary to allow the division to participate in a**
24 **multistate automated licensing system and repository.**

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

- 38 (1) any evidence the witness gives, or evidence derived from that
- 39 evidence, may not be used in any criminal proceedings against
- 40 that witness, unless the evidence is volunteered by the witness or
- 41 is not responsive to a question; and
- 42 (2) the witness must answer the questions asked and produce the

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

7 (c) In any prosecution, action, suit, or proceeding based upon or
 8 arising out of this chapter, the commissioner may sign a certificate
 9 showing compliance or noncompliance with this chapter by any person.
 10 This shall constitute prima facie evidence of compliance or
 11 noncompliance with this chapter and shall be admissible in evidence
 12 in any action at law or in equity to enforce this chapter.

13 (d) If:
 14 (1) a person disobeys any lawful:
 15 (A) subpoena issued under this chapter; or
 16 (B) order or demand requiring the production of any books,
 17 accounts, papers, records, documents, or other evidence or
 18 information as provided in this chapter; or
 19 (2) a witness refuses to:
 20 (A) appear when subpoenaed;
 21 (B) testify to any matter about which the witness may be
 22 lawfully interrogated; or
 23 (C) take or subscribe to any oath required by this chapter;
 24 the circuit or superior court of the county in which the hearing, inquiry,
 25 or investigation in question is held, if demand is made or if, upon
 26 written petition, the production is ordered to be made, or the
 27 commissioner or a hearing officer appointed by the commissioner, shall
 28 compel compliance with the lawful requirements of the subpoena,
 29 order, or demand, compel the production of the necessary or required
 30 books, papers, records, documents, and other evidence and
 31 information, and compel any witness to attend in any Indiana county
 32 and to testify to any matter about which the witness may lawfully be
 33 interrogated, and to take or subscribe to any oath required.

34 (e) If a person fails, refuses, or neglects to comply with a court order
 35 under this section, the person shall be punished for contempt of court.

36 **(f) The commissioner's authority to designate a multistate
 37 automated licensing system and repository under subsection
 38 (a)(16) is subject to the following:**

39 **(1) The commissioner may not require any person exempt
 40 from licensure or registration under this chapter, or any
 41 employee or agent of an exempt person, to:**
 42 **(A) submit information to; or**

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**(B) participate in;
the multistate automated licensing system and repository.
(2) The commissioner may require a person required under
this chapter to submit information to the multistate
automated licensing system and repository to pay a processing
fee considered reasonable by the commissioner.**

SECTION 16. IC 23-2-5-18 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) Each loan
broker agreement shall be given an account number. Each ~~licensee~~
person licensed or required to be licensed under this chapter shall
keep and maintain the following records or their electronic equivalent:

- (1) A file for each borrower or proposed borrower that contains the following:
 - (A) The name and address of the borrower or any proposed borrower.
 - (B) A copy of the signed loan broker agreement.
 - (C) A copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower.
 - (D) If a loan was obtained for the borrower, the name and address of the creditor.
 - (E) If a loan is accepted by the borrower, a copy of the loan agreement.
 - (F) The amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.
- (2) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.
- (3) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within thirty (30) days of the commissioner's request for the information.
- (4) A sample of:
 - (A) all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical;
 - (B) scripts of any recording, radio, or television announcement; and
 - (C) any sales kits or literature;
 to be used in solicitation of borrowers.
- (b) The records listed in subsection (a) shall be kept for a period of

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1 two (2) years in the ~~licensee's~~ **loan broker's** principal office and must
 2 be separate or readily identifiable from the records of any other
 3 business that is conducted in the office of the loan broker.

4 **(c) If a breach of the security of any records:**

5 **(1) maintained by a loan broker under this section; and**

6 **(2) containing the unencrypted, unredacted personal**
 7 **information of one (1) or more borrowers or prospective**
 8 **borrowers;**

9 **occurs, the loan broker is subject to the disclosure requirements**
 10 **under IC 24-4.9-3, unless the loan broker is exempt from the**
 11 **disclosure requirements under IC 24-4.9-3-4.**

12 **(d) A person who is:**

13 **(1) licensed or required to be licensed under this chapter; or**

14 **(2) registered or required to be registered under this chapter;**

15 **may not dispose of the unencrypted, unredacted personal**
 16 **information of one (1) or more borrowers or prospective**
 17 **borrowers without first shredding, incinerating, mutilating,**
 18 **erasing, or otherwise rendering the information illegible or**
 19 **unusable.**

20 SECTION 17. IC 23-2-5-19, AS AMENDED BY P.L.230-2007,
 21 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2008]: Sec. 19. (a) The following persons are exempt from the
 23 requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

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

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

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

33 (4) Any broker-dealer, agent, or investment advisor registered
 34 under IC 23-19.

35 (5) Any person that:

36 (A) procures;

37 (B) promises to procure; or

38 (C) assists in procuring;

39 a loan that is not subject to the Truth in Lending Act (15 U.S.C.
 40 1601 through 1667e).

41 (6) Any community development corporation (as defined in
 42 IC 4-4-28-2) acting as a subrecipient of funds from the Indiana

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1 housing and community development authority established by
2 IC 5-20-1-3.

3 (7) The Indiana housing and community development authority.
4 (8) Subject to subsection (e), and except as provided in subsection
5 (f); any person authorized to:

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

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

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

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

15 (E) act as a correspondent of loans insured by the United
16 States Department of Housing and Urban Development; if the
17 person closes at least twenty-five (25) such insured loans in
18 Indiana during each calendar year.

19 (9) (8) Any person who is a creditor, or proposed to be a creditor,
20 for any loan.

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

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

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

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

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

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

37 (e) A person claiming an exemption under subsection (a)(8) shall,
38 as a condition to receiving or maintaining the exemption; file a notice
39 every twenty-four (24) months on a form acceptable to the
40 commissioner. The notice required under this subsection must:

41 (1) provide the name and business address of each originator
42 employed by the person to originate loans in Indiana;

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- 1 (2) include all other information required by the commissioner;
- 2 and
- 3 (3) be accompanied by a fee of four hundred dollars (\$400).

4 If any information included in a notice under this subsection changes
 5 after the notice has been submitted, the person shall provide written
 6 notice to the commissioner of the change. The commissioner's receipt
 7 of a notice under this subsection shall not be considered to be a
 8 determination or confirmation by the commissioner of the validity of
 9 the claimed exemption.

- 10 (f) An exemption described in subsection (a)(8) does not extend to:
 - 11 (1) a subsidiary of the exempt person; or
 - 12 (2) an unaffiliated third party.

13 An exemption that applies to a person under subsection (a)(8)(D) does
 14 not extend to a registered United States Department of Veterans Affairs
 15 agent.

16 SECTION 18. IC 23-2-5-20 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. (a) As used in this
 18 section, "fully indexed rate" means:

- 19 (1) for a fixed rate mortgage transaction in which the interest
 20 rate will not vary during the term of the mortgage, the rate as
 21 of the date of closing;
- 22 (2) for a mortgage transaction in which the interest varies
 23 according to an index, the sum of the index rate as of the date
 24 of closing plus the maximum margin permitted at any time
 25 under the mortgage agreement; or
- 26 (3) for all other mortgage transactions in which the rate may
 27 vary at any time during the term of the mortgage, the
 28 maximum rate that may be charged during the term of the
 29 mortgage.

30 (b) A person shall not, in connection with a contract for the services
 31 of a loan broker, either directly or indirectly, do any of the following:

- 32 (1) Employ any device, scheme, or artifice to defraud.
- 33 (2) Make any untrue statements of a material fact or omit to state
 34 a material fact necessary in order to make the statements made, in
 35 the light of circumstances under which they are made, not
 36 misleading.
- 37 (3) Engage in any act, practice, or course of business that operates
 38 or would operate as a fraud or deceit upon any person.
- 39 (4) Collect or solicit any consideration, except a bona fide third
 40 party fee, in connection with a loan until the loan has been closed.
- 41 (5) Receive any funds if the person knows that the funds were
 42 generated as a result of a fraudulent act.

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(6) File or cause to be filed with a county recorder any document that the person knows:

(A) contains:

(i) a misstatement; or

(ii) an untrue statement;

of a material fact; or

(B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Recommend a loan to, or procure a loan on behalf of, a prospective borrower, without reasonable grounds to believe the loan is suitable for the prospective borrower based on a reasonable inquiry concerning:

(A) the prospective borrower's present and future income, expenses, assets, and liabilities;

(B) the prospective borrower's credit history; and

(C) any other factors likely to affect the prospective borrower's ability to repay the loan, including the borrower's ability to repay the loan at its fully indexed rate.

(c) A person who commits an act described in subsection (b) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 19. IC 23-2-5-22, AS ADDED BY P.L.48-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. (a) An appeal may be taken by:

(1) any ~~loan broker or principal upon~~ **person** whose application for ~~registration for a loan broker~~ **an initial or a renewal license under this chapter** is granted or denied, from any final order of the commissioner concerning the application; ~~or registration;~~

(2) any applicant for **initial or renewed** registration as a ~~loan broker principal manager~~ **or an originator**, from any final order of the commissioner affecting the application; ~~or registration as a loan broker or originator;~~

(3) any person against whom a civil penalty is imposed under

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1 section 14(a) of this chapter, from the final order of the
2 commissioner imposing the civil penalty; or

3 (4) any person who is named as a respondent, from any final order
4 issued by the commissioner under section 10 or 11 of this chapter;
5 to the Marion circuit court or to the circuit or superior court of the
6 county where the person taking the appeal resides or maintains a place
7 of business.

8 (b) Not later than twenty (20) days after the entry of the order, the
9 commissioner shall be served with:

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

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

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

21 (c) Not later than ten (10) days after the commissioner is served
22 with the items listed in subsection (b), the commissioner shall make,
23 certify, and deliver to the appellant the transcript, and the appellant
24 shall, not later than five (5) days after the date the appellant receives
25 the transcript, file the transcript and a copy of the notice of appeal with
26 the clerk of the court. The notice of appeal serves as the appellant's
27 complaint. The commissioner may appear and file any motion or
28 pleading and form the issue. The cause shall be entered on the trial
29 calendar for trial de novo and given precedence over all matters
30 pending in the court.

31 (d) The court shall receive and consider any pertinent oral or written
32 evidence concerning the order of the commissioner from which the
33 appeal is taken. If the order of the commissioner is reversed, the court
34 shall in its mandate specifically direct the commissioner as to the
35 commissioner's further action in the matter. The commissioner is not
36 barred from revoking or altering the order for any proper cause that
37 accrues or is discovered after the order is entered. If the order is
38 affirmed, the appellant is not barred after thirty (30) days from the date
39 the order is affirmed from filing a new application if the application is
40 not otherwise barred or limited. During the pendency of the appeal, the
41 order from which the appeal is taken is not suspended but remains in
42 effect unless otherwise ordered by the court. An appeal may be taken

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1 from the judgment of the court on the same terms and conditions as an
2 appeal is taken in civil actions.

3 SECTION 20. IC 24-4.5-1-301, AS AMENDED BY P.L.57-2006,
4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JANUARY 1, 2009]: Sec. 301. General Definitions – In addition to
6 definitions appearing in subsequent chapters in this article:

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

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

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

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

- 24 (a) fees or premiums for title examination, title insurance, or
- 25 similar purposes, including surveys;
- 26 (b) fees for preparation of a deed, settlement statement, or other
- 27 documents;
- 28 (c) escrows for future payments of taxes and insurance;
- 29 (d) fees for notarizing deeds and other documents;
- 30 (e) appraisal fees; and
- 31 (f) credit reports.

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

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

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

39 (8) "Creditor" means a person:

- 40 (a) who regularly engages in the extension of consumer credit that
- 41 is subject to a credit service charge or loan finance charge, as
- 42 applicable, or is payable **by written agreement in more than**

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1 **four (4) installments (not including a down payment);** and
2 (b) to whom the obligation is initially payable, either on the face
3 of the note or contract, or by agreement when there is not a note
4 or contract.

5 **The term does not include a person that is licensed or registered**
6 **under IC 23-2-5.**

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

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

- 16 (a) by the lender's honoring a draft or similar order for the
- 17 payment of money drawn or accepted by the debtor;
- 18 (b) by the lender's payment or agreement to pay the debtor's
- 19 obligations; or
- 20 (c) by the lender's purchase from the obligee of the debtor's
- 21 obligations.

22 (11) "Official fees" means:

- 23 (a) fees and charges prescribed by law which actually are or will
- 24 be paid to public officials for determining the existence of or for
- 25 perfecting, releasing, or satisfying a security interest related to a
- 26 consumer credit sale, consumer lease, or consumer loan; or
- 27 (b) premiums payable for insurance in lieu of perfecting a security
- 28 interest otherwise required by the creditor in connection with the
- 29 sale, lease, or loan, if the premium does not exceed the fees and
- 30 charges described in paragraph (a) which would otherwise be
- 31 payable.

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

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

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

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

- 42 (a) the spouse of the individual;

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- 1 (b) a brother, brother-in-law, sister, sister-in-law of the individual;
 2 (c) an ancestor or lineal descendants of the individual or the
 3 individual's spouse; and
 4 (d) any other relative, by blood or marriage, of the individual or
 5 the individual's spouse who shares the same home with the
 6 individual.

- 7 "Person related to" with respect to an organization means:
 8 (a) a person directly or indirectly controlling, controlled by, or
 9 under common control with the organization;
 10 (b) an officer or director of the organization or a person
 11 performing similar functions with respect to the organization or
 12 to a person related to the organization;
 13 (c) the spouse of a person related to the organization; and
 14 (d) a relative by blood or marriage of a person related to the
 15 organization who shares the same home with the person.

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

19 (17) "Mortgage transaction" means a ~~transaction~~ **consumer credit**
 20 **sale or consumer loan** in which a **first** mortgage, **deed of trust**, or a
 21 land contract which constitutes a **first** lien is created or retained against
 22 land **upon which there is a dwelling that is or will be used by the**
 23 **debtor primarily for personal, family, or household purposes.**

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

- 26 (a) twenty-five (25) times; or
 27 (b) five (5) times for transactions secured by a dwelling;
 28 in the preceding calendar year. If a person did not meet these numerical
 29 standards in the preceding calendar year, the numerical standards shall
 30 be applied to the current calendar year.

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

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

- 42 (a) organized, chartered, or holding an authorization certificate

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1 under the laws of a state or of the United States which authorizes
 2 the person to make loans and to receive deposits, including a
 3 savings, share, certificate, or deposit account; and

4 (b) subject to supervision by an official or agency of a state or of
 5 the United States.

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

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

12 (a) controls;

13 (b) is controlled by; or

14 (c) is under common control with;

15 the person subject to this article.

16 (23) "Dwelling" means a residential structure that contains one
 17 (1) to four (4) units, regardless of whether the structure is attached
 18 to real property. The term includes an individual:

19 (a) condominium unit;

20 (b) cooperative unit;

21 (c) mobile home; or

22 (d) trailer;

23 that is used as a residence.

24 SECTION 21. IC 24-4.5-2-104 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 104. (1) Except
 26 as provided in subsection (2), "consumer credit sale" is a sale of goods,
 27 services, or an interest in land in which:

28 (a) credit is granted by a person who regularly engages as a seller
 29 in credit transactions of the same kind;

30 (b) the buyer is a person other than an organization;

31 (c) the goods, services, or interest in land are purchased primarily
 32 for a personal, family, or household purpose;

33 (d) either the debt is payable in installments or a credit service
 34 charge is made; and

35 (e) with respect to a sale of goods or services, either:

36 (i) the amount financed does not exceed fifty thousand dollars
 37 (\$50,000); or

38 (ii) the debt is secured by a mortgage transaction or by
 39 personal property used or expected to be used as the principal
 40 a dwelling of the buyer.

41 (2) Unless the sale is made subject to this article by agreement
 42 (IC 24-4.5-2-601), "consumer credit sale" does not include (a) a sale in

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1 which the seller allows the buyer to purchase goods or services
 2 pursuant to a lender credit card or similar arrangement. ~~or (b) except~~
 3 ~~as provided with respect to disclosure (IC 24-4.5-2-301); debtors'~~
 4 ~~remedies (IC 24-4.5-5-201); providing payoff amounts (IC~~
 5 ~~24-4.5-2-209); and powers and functions of the department (IC~~
 6 ~~24-4.5-6-101); a sale of an interest in land which is a mortgage~~
 7 ~~transaction (as defined in IC 24-4.5-1-301(17)).~~

8 SECTION 22. IC 24-4.5-2-105 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 105. Definitions:
 10 "Goods"; "Merchandise Certificate"; "Services"; "Sale of Goods"; "Sale
 11 of Services"; "Sale of an Interest in Land"; "Precomputed".

12 (1) "Goods" includes goods not in existence at the time the
 13 transaction is entered into and merchandise certificates, but excludes
 14 money, chattel paper, documents of title, and instruments.

15 (2) "Merchandise certificate" means a writing issued by a seller not
 16 redeemable in cash and usable in its face amount in lieu of cash in
 17 exchange for goods or services.

18 (3) "Services" includes (a) work, labor, and other personal services,
 19 (b) privileges with respect to transportation, hotel and restaurant
 20 accommodations, education, entertainment, recreation, physical
 21 culture, hospital accommodations, funerals, cemetery accommodations,
 22 and the like, and (c) insurance provided by a person other than the
 23 insurer.

24 (4) "Sale of goods" includes any agreement in the form of a bailment
 25 or lease of goods if the bailee or lessee agrees to pay as compensation
 26 for use a sum substantially equivalent to or in excess of the aggregate
 27 value of the goods involved and it is agreed that the bailee or lessee
 28 will become, or for no other or a nominal consideration has the option
 29 to become, the owner of the goods upon full compliance with ~~his~~ **the**
 30 **bailee's or lessee's** obligations under the agreement.

31 (5) "Sale of services" means furnishing or agreeing to furnish
 32 services and includes making arrangements to have services furnished
 33 by another.

34 (6) "Sale of an interest in land" includes **a mortgage transaction or**
 35 **a lease in which the mortgagor or the lessee has an option to purchase**
 36 **the interest and all or a substantial part of the rental or other payments**
 37 **previously made by him the mortgagor or the lessee are applied to the**
 38 **purchase price.**

39 (7) A sale, refinancing, or consolidation is "precomputed" if the debt
 40 is expressed as a sum comprising the amount financed and the amount
 41 of the credit service charge computed in advance.

42 SECTION 23. IC 24-4.5-2-107 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definition;
 2 "Seller" - Except as otherwise provided, "seller" **means a person**
 3 **regularly engaged as a creditor in making consumer credit sales.**
 4 **The term** includes an assignee of the seller's right to payment but use
 5 of the term does not in itself impose on an assignee any obligation of
 6 the seller with respect to events occurring before the assignment.

7 SECTION 24. IC 24-4.5-2-201, AS AMENDED BY P.L.57-2006,
 8 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JANUARY 1, 2009]: Sec. 201. Credit Service Charge for Consumer
 10 Credit Sales other than Revolving Charge Accounts — (1) With respect
 11 to a consumer credit sale, other than a sale pursuant to a revolving
 12 charge account, a seller may contract for and receive a credit service
 13 charge not exceeding that permitted by this section.

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

17 (a) the total of:

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

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

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

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

30 (3) **Except that not more than twenty-five percent (25%) of the**
 31 **credit service charge on a consumer credit sale that is a mortgage**
 32 **transaction may be precomputed**, this section does not limit or
 33 restrict the manner of contracting for the credit service charge, whether
 34 by way of add-on, discount, or otherwise, so long as the rate of the
 35 credit service charge does not exceed that permitted by this section. If
 36 the sale is precomputed:

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

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

41 (4) For the purposes of this section, the term of a sale agreement
 42 commences with the date the credit is granted or, if goods are delivered

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1 or services performed more than thirty (30) days after that date, with
 2 the date of commencement of delivery or performance except as set
 3 forth below:

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

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

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

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

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

26 (b) when applied to the lowest amount within each range, it does
 27 not produce a rate of credit service charge exceeding the rate
 28 calculated according to paragraph (a) by more than eight percent
 29 (8%) of the rate calculated according to paragraph (a).

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

34 (a) the ~~borrower~~ **debtor** prepays in full a consumer credit sale,
 35 refinancing, or consolidation, regardless of whether the sale,
 36 refinancing, or consolidation is precomputed;

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

39 (i) is contracted for by the parties; and

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

41 (c) the credit service charge earned at the time of prepayment is
 42 less than the minimum credit service charge contracted for under

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1 this subsection.

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

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

10 SECTION 25. IC 24-4.5-2-203.5 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 203.5.
12 Delinquency Charges – (1) With respect to a consumer credit sale,
13 refinancing, or consolidation, **other than a first lien mortgage**
14 **transaction**, the parties may contract for a delinquency charge of not
15 more than five dollars (\$5) on any installment or minimum payment
16 due not paid in full within ten (10) days after its scheduled due date.
17 **For a first lien mortgage transaction, the parties may contract for**
18 **a delinquency charge of not more than five percent (5%) of the**
19 **contracted payment amount.**

20 (2) A delinquency charge under this section may be collected only
21 once on an installment however long it remains in default. A
22 delinquency charge on consumer credit sales made under a revolving
23 charge account may be applied each month that the payment is less
24 than the minimum required payment. A delinquency charge may be
25 collected any time after it accrues. No delinquency charge may be
26 collected if the installment has been deferred and a deferral charge
27 (IC 24-4.5-2-204) has been paid or incurred.

28 (3) **Except for a first lien mortgage transaction**, a delinquency
29 charge may not be collected on an installment or payment due that is
30 paid in full within ten (10) days after its scheduled due date even
31 though an earlier maturing installment, minimum payment, or a
32 delinquency charge on:

- 33 (a) an earlier installment; or
34 (b) payment due;

35 may not have been paid in full. For purposes of this subsection,
36 payments are applied first to current installments or payments due and
37 then to delinquent installments or payments due.

38 (4) If two (2) installments or parts of two (2) installments of a
39 precomputed consumer credit sale are in default for ten (10) days or
40 more, the creditor may elect to convert the consumer credit sale from
41 a precomputed consumer credit sale to a consumer credit sale in which
42 the credit service charge is based on unpaid balances. A creditor that

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1 makes this election shall make a rebate under the provisions on rebates
2 upon prepayment under IC 24-4.5-2-210 as of the maturity date of the
3 first delinquent installment, and thereafter may make a credit service
4 charge as authorized by the provisions on credit service charges for
5 consumer credit sales under IC 24-4.5-2-201. The amount of the rebate
6 shall not be reduced by the amount of any permitted minimum charge
7 under IC 24-4.5-2-210. Any deferral charges made on installments due
8 at or after the maturity date of the first delinquent installment shall be
9 rebated, and no further deferral charges shall be made.

10 (5) The amount of five dollars (\$5) in subsection (1) is subject to
11 change under the section on adjustment of dollar amounts
12 (IC 24-4.5-1-106).

13 (6) If the parties provide by contract for a delinquency charge that
14 is subject to change, the seller shall disclose in the contract that the
15 amount of the delinquency charge is subject to change as allowed by
16 IC 24-4.5-1-106.

17 SECTION 26. IC 24-4.5-2-209 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 209. Right to Prepay -

19 (1) Subject to the provisions on rebate upon prepayment
20 (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of
21 a consumer credit sale, refinancing, or consolidation at any time
22 without penalty.

23 (2) At the time of prepayment of a credit sale not subject to the
24 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total
25 credit service charge, including the prepaid credit service charge, may
26 not exceed the maximum charge allowed under this chapter for the
27 period the credit sale was in effect.

28 (3) The creditor or mortgage servicer shall provide an accurate
29 payoff of the consumer credit sale to the debtor within ten (10)
30 calendar days after the creditor or mortgage servicer receives the
31 debtor's written request for the accurate consumer credit sale payoff
32 amount. A creditor or mortgage servicer who fails to provide the
33 accurate consumer credit sale payoff amount is liable for:

34 (A) one hundred dollars (\$100) if an accurate consumer credit
35 sale payoff amount is not provided by the creditor or mortgage
36 servicer within ten (10) calendar days after the creditor or
37 mortgage servicer receives the debtor's first written request;
38 and

39 (B) the greater of:
40 (i) one hundred dollars (\$100); or
41 (ii) the credit service charge that accrues on the sale from
42 the date the creditor or mortgage servicer receives the first

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1 written request until the date on which the accurate
2 consumer credit sale payoff amount is provided;
3 if an accurate consumer credit sale payoff amount is not
4 provided by the creditor or mortgage servicer within ten (10)
5 calendar days after the creditor or mortgage servicer receives
6 the debtor's second written request, and the creditor or
7 mortgage servicer failed to comply with clause (A).

8 A liability under this subsection is an excess charge under
9 IC 24-4.5-5-202.

10 **(4) This subsection applies to a consumer credit sale that is a**
11 **mortgage transaction. The creditor or mortgage servicer shall**
12 **respond to a written offer made in connection with a proposed**
13 **short sale not later than ten (10) calendar days after the date of the**
14 **offer. As used in this subsection, "short sale" means a transaction**
15 **in which the property that is the subject of a mortgage transaction**
16 **is sold for an amount that is less than the amount of the debtor's**
17 **outstanding obligation under the mortgage transaction. A creditor**
18 **or mortgage servicer that fails to respond to an offer within the**
19 **time prescribed by this subsection is liable under the terms set**
20 **forth in subsection (3), as if the creditor or mortgage servicer had**
21 **failed to provide a consumer credit sale payoff amount.**

22 SECTION 27. IC 24-4.5-3-103 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 103. Definitions
24 in Chapter – The following definitions apply to this Article:

- 25 "Consumer loan" Section 3-104
- 26 "Consumer related loan" Section 3-602 (1)
- 27 "Lender" Section 3-107 (1)
- 28 "Loan" Section 3-106
- 29 "Loan finance charge" Section 3-109
- 30 ~~"Loan primarily secured by an~~
- 31 ~~interest in land"~~ ~~Section 3-105~~
- 32 "Precomputed" Section 3-107 (2)
- 33 "Principal" Section 3-107 (3)
- 34 "Revolving loan account" Section 3-108
- 35 "Supervised lender" Section 3-501 (2)
- 36 "Supervised loan" 3-501 (1)

37 SECTION 28. IC 24-4.5-3-104 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 104. ~~Except with~~
39 ~~respect to a loan primarily secured by an interest in land~~
40 ~~(IC 24-4.5-3-105); "Consumer loan" is a loan made by a person~~
41 ~~regularly engaged in the business of making loans in which:~~

42 (a) the debtor is a person other than an organization;

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- 1 (b) the debt is primarily for a personal, family, or household
- 2 purpose;
- 3 (c) either the debt is payable in installments or a loan finance
- 4 charge is made; and
- 5 (d) either:
 - 6 (i) the principal does not exceed fifty thousand dollars
 - 7 (\$50,000); or
 - 8 (ii) the debt is secured by an interest in land or by personal
 - 9 property used or expected to be used as the principal dwelling
 - 10 of the debtor.

11 SECTION 29. IC 24-4.5-3-107 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definitions:
 13 "Lender"; "Precomputed"; "Principal" – (1) Except as otherwise
 14 provided, "lender" **means a person regularly engaged in making**
 15 **consumer loans. The term** includes an assignee of the lender's right
 16 to payment but use of the term does not in itself impose on an assignee
 17 any obligation of the lender with respect to events occurring before the
 18 assignment.

19 (2) A loan, refinancing, or consolidation is "precomputed" if the
 20 debt is expressed as a sum comprising the principal and the amount of
 21 the loan finance charge computed in advance.

- 22 (3) "Principal" of a loan means the total of:
 - 23 (a) the net amount paid to, receivable by, or paid or payable for
 - 24 the account of the debtor;
 - 25 (b) the amount of any discount excluded from the loan finance
 - 26 charge (subsection (2) of 24-4.5-3-109); and
 - 27 (c) to the extent that payment is deferred:
 - 28 (i) amounts actually paid or to be paid by the lender for
 - 29 registration, certificate of title, or license fees if not included
 - 30 in (a); and
 - 31 (ii) additional charges permitted by this Chapter
 - 32 (24-4.5-3-202).

33 SECTION 30. IC 24-4.5-3-201, AS AMENDED BY P.L.57-2006,
 34 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JANUARY 1, 2009]: Sec. 201. Loan Finance Charge for Consumer
 36 Loans other than Supervised Loans—(1) Except as provided in
 37 subsections (6) and (8), with respect to a consumer loan other than a
 38 supervised loan (IC 24-4.5-3-501), a lender may contract for a loan
 39 finance charge, calculated according to the actuarial method, not
 40 exceeding twenty-one percent (21%) per year on the unpaid balances
 41 of the principal.

42 (2) **Except that not more than twenty-five percent (25%) of the**

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1 **loan finance charge on a consumer credit loan that is a mortgage**
 2 **transaction may be precomputed**, this section does not limit or
 3 restrict the manner of contracting for the loan finance charge, whether
 4 by way of add-on, discount, or otherwise, so long as the rate of the loan
 5 finance charge does not exceed that permitted by this section. If the
 6 loan is precomputed:

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

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

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

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

23 (a) the loan finance charge shall be deemed not to exceed the
 24 maximum annual percentage rate if the loan finance charge
 25 contracted for and received does not exceed a charge in each
 26 monthly billing cycle which is one and three-fourths percent (1
 27 $\frac{3}{4}$ %) of an amount no greater than:

28 (i) the average daily balance of the debt;

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

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

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

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

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

- 16 (a) when applied to the median amount within each range, it does
 17 not exceed the maximum permitted by subsection (1); and
 18 (b) when applied to the lowest amount within each range, it does
 19 not produce a rate of loan finance charge exceeding the rate
 20 calculated according to paragraph (a) by more than eight percent
 21 (8%) of the rate calculated according to paragraph (a).

22 (6) With respect to a consumer loan not made pursuant to a
 23 revolving loan account, the lender may contract for and receive a
 24 minimum loan finance charge of not more than thirty dollars (\$30). The
 25 minimum loan finance charge allowed under this subsection may be
 26 imposed only if:

- 27 (a) the **borrower debtor** prepays in full a consumer loan,
 28 refinancing, or consolidation, regardless of whether the loan,
 29 refinancing, or consolidation is precomputed;
 30 (b) the loan, refinancing, or consolidation prepaid by the **borrower**
 31 **debtor** is subject to a loan finance charge that:
 32 (i) is contracted for by the parties; and
 33 (ii) does not exceed the rate prescribed in subsection (1); and
 34 (c) the loan finance charge earned at the time of prepayment is
 35 less than the minimum loan finance charge contracted for under
 36 this subsection.

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

42 (8) In addition to the loan finance charge provided for in this

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- 1 section, a lender may contract for the following:
- 2 (a) With respect to a consumer loan that is not made under a
- 3 revolving loan account, a loan origination fee of not more than
- 4 two percent (2%) of the loan amount.
- 5 (b) With respect to a consumer loan that is made under a
- 6 revolving loan account, a loan origination fee of not more than
- 7 two percent (2%) of the line of credit that was contracted for.
- 8 (9) The charges provided for in subsection (8):
- 9 (a) are not subject to refund or rebate;
- 10 (b) are not permitted if a lender makes a settlement charge under
- 11 IC 24-4.5-3-202(d)(ii); and
- 12 (c) are limited to two percent (2%) of the part of the loan that
- 13 does not exceed two thousand dollars (\$2,000), if the loan is not
- 14 primarily secured by an interest in land.

15 Notwithstanding subdivision (a), if a lender retains any part of a loan
 16 origination fee charged on a loan that is paid in full by a new loan from
 17 the same lender within three (3) months after the date of the prior loan,
 18 the lender may charge a loan origination fee only on that part of the
 19 new loan not used to pay the amount due on the prior loan, or in the
 20 case of a revolving loan, the lender may charge a loan origination fee
 21 only on the difference between the amount of the existing credit line
 22 and the increased credit line. This subsection does not prohibit a lender
 23 from contracting for and receiving a fee for preparing deeds,
 24 mortgages, reconveyance, and similar documents under
 25 IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in
 26 subsection (8).

27 SECTION 31. IC 24-4.5-3-203.5 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 203.5.
 29 Delinquency Charges – (1) With respect to a consumer loan,
 30 refinancing, or consolidation, **other than a first lien mortgage**
 31 **transaction**, the parties may contract for a delinquency charge of not
 32 more than five dollars (\$5) on any installment or minimum payment
 33 due not paid in full within ten (10) days after its scheduled due date.
 34 **For a first lien mortgage transaction, the parties may contract for**
 35 **a delinquency charge of not more than five percent (5%) of the**
 36 **contracted payment amount.**

37 (2) A delinquency charge under this section may be collected only
 38 once on an installment however long it remains in default. With regard
 39 to a delinquency charge on consumer loans made under a revolving
 40 loan account, the delinquency charge may be applied each month that
 41 the payment is less than the minimum required payment on the
 42 account. A delinquency charge may be collected any time after it

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1 accrues. A delinquency charge may not be collected if the installment
2 has been deferred and a deferral charge (IC 24-4.5-3-204) has been
3 paid or incurred.

4 (3) **Except for a first lien mortgage transaction**, a delinquency
5 charge may not be collected on an installment or payment due that is
6 paid in full within ten (10) days after its scheduled due date even
7 though an earlier maturing installment, minimum payment, or a
8 delinquency charge on:

9 (a) an earlier installment; or

10 (b) payment due;

11 may not have been paid in full. For purposes of this subsection,
12 payments are applied first to current installments or payments due and
13 then to delinquent installments or payments due.

14 (4) If two (2) installments or parts of two (2) installments of a
15 precomputed loan are in default for ten (10) days or more, the lender
16 may elect to convert the loan from a precomputed loan to a loan in
17 which the finance charge is based on unpaid balances. A lender that
18 makes this election shall make a rebate under the provisions on rebates
19 upon prepayment (IC 24-4.5-3-210) as of the maturity date of the first
20 delinquent installment, and thereafter may make a loan finance charge
21 as authorized by the provisions on loan finance charges for consumer
22 loans (IC 24-4.5-3-201) or supervised loans (IC 24-4.5-3-508). The
23 amount of the rebate shall not be reduced by the amount of any
24 permitted minimum charge (IC 24-4.5-3-210). Any deferral charges
25 made on installments due at or after the maturity date of the first
26 delinquent installment shall be rebated, and no further deferral charges
27 shall be made.

28 (5) The amount of five dollars (\$5) in subsection (1) is subject to
29 change pursuant to the section on adjustment of dollar amounts
30 (IC 24-4.5-1-106).

31 (6) If the parties provide by contract for a delinquency charge that
32 is subject to change, the lender shall disclose in the contract that the
33 amount of the delinquency charge is subject to change as allowed by
34 IC 24-4.5-1-106.

35 SECTION 32. IC 24-4.5-3-209 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to
37 Prepay - (1) Subject to the provisions on rebate upon prepayment
38 (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of
39 a consumer loan, refinancing, or consolidation at any time without
40 penalty. With respect to a consumer loan that is primarily secured by
41 an interest in land, a lender may contract for a penalty for prepayment
42 of the loan in full, not to exceed two percent (2%) of any amount

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1 prepaid within sixty (60) days of the date of the prepayment in full,
 2 after deducting all refunds and rebates as of the date of the prepayment.
 3 However, the penalty may not be imposed:

- 4 (a) if the loan is refinanced or consolidated with the same
 5 creditor;
 6 (b) for prepayment by proceeds of any insurance or acceleration
 7 after default; or
 8 (c) after three (3) years from the contract date;
 9 **(d) if the loan is a subprime mortgage transaction (as defined**
 10 **in IC 24-4.5-8-107); or**
 11 **(e) after the second year following the closing of the loan if the**
 12 **loan is a high cost home loan other than a subprime loan, as**
 13 **provided in IC 24-9-4-1(2).**

14 (2) At the time of prepayment of a consumer loan not subject to the
 15 provisions of rebate upon prepayment (IC 24-4.5-3-210), the total
 16 finance charge, including the prepaid finance charge but excluding the
 17 loan origination fee allowed under IC 24-4.5-3-201, may not exceed the
 18 maximum charge allowed under this chapter for the period the loan was
 19 in effect. For the purposes of determining compliance with this
 20 subsection, the total finance charge does not include the following:

- 21 (a) The loan origination fee allowed under IC 24-4.5-3-201.
 22 (b) The ~~borrower~~ **debtor** paid mortgage broker fee, if any, paid to
 23 a person who does not control, is not controlled by, or is not under
 24 common control with, the creditor holding the loan at the time a
 25 consumer loan is prepaid.

26 (3) The creditor or mortgage servicer shall provide an accurate
 27 payoff of the consumer loan to the debtor within ten (10) calendar days
 28 after the creditor or mortgage servicer receives the debtor's written
 29 request for the accurate consumer loan payoff amount. A creditor or
 30 mortgage servicer who fails to provide the accurate consumer loan
 31 payoff amount is liable for:

- 32 (a) one hundred dollars (\$100) if an accurate consumer loan
 33 payoff amount is not provided by the creditor or mortgage
 34 servicer within ten (10) calendar days after the creditor or
 35 mortgage servicer receives the debtor's first written request; and
 36 (b) the greater of:
 37 (i) one hundred dollars (\$100); or
 38 (ii) the loan finance charge that accrues on the loan from the
 39 date the creditor or mortgage servicer receives the first written
 40 request until the date on which the accurate consumer loan
 41 payoff amount is provided;
 42 if an accurate consumer loan payoff amount is not provided by the

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1 creditor or mortgage servicer within ten (10) calendar days after
2 the creditor or mortgage servicer receives the debtor's second
3 written request, and the creditor or mortgage servicer failed to
4 comply with subdivision (a).

5 A liability under this subsection is an excess charge under
6 IC 24-4.5-5-202.

7 **(4) This subsection applies to a consumer credit loan that is a**
8 **mortgage transaction. The creditor or mortgage servicer shall**
9 **respond to a written offer made in connection with a proposed**
10 **short sale not later than ten (10) calendar days after the date of the**
11 **offer. As used in this subsection, "short sale" means a transaction**
12 **in which the property that is the subject of a mortgage transaction**
13 **is sold for an amount that is less than the amount of the debtor's**
14 **outstanding obligation under the mortgage transaction. A creditor**
15 **or mortgage servicer that fails to respond to an offer within the**
16 **time prescribed by this subsection is liable under the terms set**
17 **forth in subsection (3), as if the creditor or mortgage servicer had**
18 **failed to provide a consumer loan payoff amount.**

19 SECTION 33. IC 24-4.5-3-301 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 301. ~~(†)~~ For the
21 purposes of this section, "consumer loan" includes a loan secured
22 primarily by an interest in land which is a mortgage transaction if the
23 loan is otherwise a consumer loan (IC 24-4.5-3-104).

24 ~~(2)~~ **(1)** The lender shall disclose to the debtor to whom credit is
25 extended with respect to a consumer loan the information required by
26 the Federal Consumer Credit Protection Act.

27 ~~(3)~~ **(2)** For purposes of subsection ~~(2)~~; **(1)**, disclosures shall not be
28 required on a consumer loan if the transaction is exempt from the
29 Federal Consumer Credit Protection Act.

30 SECTION 34. IC 24-4.5-3-508, AS AMENDED BY P.L.57-2006,
31 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JANUARY 1, 2009]: Sec. 508. Loan Finance Charge for Supervised
33 Loans – (1) With respect to a supervised loan, including a loan
34 pursuant to a revolving loan account, a supervised lender may contract
35 for and receive a loan finance charge not exceeding that permitted by
36 this section.

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

- 40 (a) the total of:
 - 41 (i) thirty-six percent (36%) per year on that part of the unpaid
 - 42 balances of the principal which is three hundred dollars (\$300)

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- 1 or less;
- 2 (ii) twenty-one percent (21%) per year on that part of the
- 3 unpaid balances of the principal which is more than three
- 4 hundred dollars (\$300) but does not exceed one thousand
- 5 dollars (\$1,000); and
- 6 (iii) fifteen percent (15%) per year on that part of the unpaid
- 7 balances of the principal which is more than one thousand
- 8 dollars (\$1000); or
- 9 (b) twenty-one percent (21%) per year on the unpaid balances of
- 10 the principal.

11 **(3) Except that not more than twenty-five percent (25%) of the**
 12 **loan finance charge on a consumer credit loan that is a mortgage**
 13 **transaction may be precomputed,** this section does not limit or
 14 restrict the manner of contracting for the loan finance charge, whether
 15 by way of add-on, discount, or otherwise, so long as the rate of the loan
 16 finance charge does not exceed that permitted by this section. If the
 17 loan is precomputed:

- 18 (a) the loan finance charge may be calculated on the assumption
- 19 that all scheduled payments will be made when due; and
- 20 (b) the effect of prepayment is governed by the provisions on
- 21 rebate upon prepayment (IC 24-4.5-3-210).

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

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

- 34 (a) when applied to the median amount within each range, it does
- 35 not exceed the maximum permitted in subsection (2); and
- 36 (b) when applied to the lowest amount within each range, it does
- 37 not produce a rate of loan finance charge exceeding the rate
- 38 calculated according to paragraph (a) by more than eight percent
- 39 (8%) of the rate calculated according to paragraph (a).

40 (6) The amounts of three hundred dollars (\$300) and one thousand
 41 dollars (\$1,000) in subsection (2) and thirty dollars (\$30) in subsection
 42 (7) are subject to change pursuant to the provisions on adjustment of

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1 dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of
2 thirty dollars (\$30), the Reference Base Index to be used is the Index
3 for October 1992.

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

- 9 (a) the ~~borrower debtor~~ prepays in full a consumer loan,
10 refinancing, or consolidation, regardless of whether the loan,
11 refinancing, or consolidation is precomputed;
- 12 (b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~
13 ~~debtor~~ is subject to a loan finance charge that:
14 (i) is contracted for by the parties; and
15 (ii) does not exceed the rate prescribed in subsection (2); and
- 16 (c) the loan finance charge earned at the time of prepayment is
17 less than the minimum loan finance charge contracted for under
18 this subsection.

19 SECTION 35. IC 24-4.5-8 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 JANUARY 1, 2009]:

22 **Chapter 8. Mortgage Transactions**

23 **Sec. 101. This chapter shall be known and may be cited as**
24 **Uniform Consumer Credit Code—Mortgage Transactions.**

25 **Sec. 102. (1) Except as otherwise provided, all provisions of this**
26 **article that apply to consumer credit sales and consumer loans**
27 **apply to mortgage transactions.**

28 **(2) This chapter applies to a creditor and to any person that**
29 **facilitates, enables, or acts as a conduit for any person that is or**
30 **may be exempt from:**

- 31 (a) licensing under IC 24-4.5-3-502; or
- 32 (b) filing notification with the department under
33 IC 24-4.5-6-202.

34 **(3) Except for the prohibition against prepayment penalties for**
35 **subprime mortgage transactions under section 109 of this chapter,**
36 **this chapter does not apply to:**

- 37 (a) a bank;
- 38 (b) a savings association;
- 39 (c) a credit union; or
- 40 (d) any other state or federally chartered financial institution.

41 **(4) A creditor's employee who originates mortgage transactions**
42 **shall comply with the registration requirements established by the**

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1 rules, policies, and directives adopted or issued by the director or
2 the department.

3 (5) The following do not apply to a person that is licensed or
4 registered under IC 23-2-5:

- 5 (a) The licensing requirements set forth in IC 24-4.5-3-502.
- 6 (b) The notification requirements set forth in IC 24-4.5-6-202.

7 Sec. 103. The following definitions apply throughout this
8 chapter:

9 "Mortgage transaction"	Section 8-104
10 "Nontraditional mortgage transaction"	Section 8-105
11 "Subprime debtor"	Section 8-106
12 "Subprime mortgage transaction"	Section 8-107

13 Sec. 104. "Mortgage transaction" means a consumer credit sale
14 or consumer loan in which a mortgage, deed of trust, or land
15 contract which constitutes a lien is created or retained against land
16 upon which there is a dwelling (as defined in IC 24-4.5-1-301(23))
17 that is or will be used by the debtor primarily for personal, family,
18 or household purposes.

19 Sec. 105. (1) "Nontraditional mortgage transaction" includes:

- 20 (a) interest-only;
- 21 (b) payment option; and
- 22 (c) negative amortization;

23 consumer credit sales and consumer loans.

24 (2) The term also includes an adjustable rate mortgage
25 transaction (as defined in section 110(1) of this chapter) that:

- 26 (a) provides for lower payments during an initial period,
27 followed by higher payments later in the amortization period;
28 and
- 29 (b) contains other terms or conditions that distinguish the
30 mortgage transaction from traditional mortgage transactions,
31 as determined under rules, policies, and directives adopted or
32 issued by the director or the department.

33 Sec. 106. "Subprime debtor" means a debtor who, at the time of
34 the origination of a mortgage transaction, the creditor knew or
35 should have known had a reduced or impaired repayment capacity
36 based on the debtor's credit score, debt-to-income ratio, or
37 reliability of income.

38 Sec. 107. "Subprime mortgage transaction" means a mortgage
39 transaction in which the mortgagor is a subprime debtor.

40 Sec. 108. Subject to IC 24-4.5-2-203.5 and IC 24-4.5-3-203.5, the
41 parties to a first lien mortgage transaction may contract for a
42 delinquency charge that is payable with respect to any installment

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1 or minimum payment due that is not paid in full within ten (10)
2 days after its scheduled due date. A delinquency charge allowed
3 under this section may not exceed five percent (5%) of the
4 contracted payment amount.

5 Sec. 109. The documents for a subprime mortgage transaction
6 may not provide for, and a creditor issuing a subprime mortgage
7 may not charge the debtor, prepayment penalties or fees.

8 Sec. 110. (1) As used in this section, "adjustable rate mortgage
9 transaction" means a mortgage transaction with a rate that is
10 subject to change at one (1) or more times during the term of the
11 mortgage transaction.

12 (2) As used in this section, "fixed rate mortgage transaction"
13 means a mortgage transaction with a rate that is not subject to
14 change during the term of the mortgage transaction.

15 (3) As used in this section, "fully indexed rate" means:
16 (a) for a fixed rate mortgage transaction, the rate as of the
17 date of closing;
18 (b) for an adjustable rate mortgage transaction in which the
19 rate varies according to an index, the sum of the index rate as
20 of the date of closing plus the maximum margin permitted at
21 any time under the mortgage agreement; or
22 (c) for all other adjustable rate mortgage transactions, the
23 maximum rate that may be charged during the term of the
24 mortgage.

25 (4) Regardless of whether a mortgage transaction is originated
26 by an employee of the creditor or by a third party, a creditor
27 retains the responsibility for ensuring that the mortgage
28 transaction complies with this chapter and with any rules, policies,
29 and directives adopted or issued by the director or the department
30 under this chapter.

31 (5) A creditor that offers:
32 (a) a nontraditional mortgage transaction; or
33 (b) a subprime mortgage transaction;
34 to a debtor must exercise prudent underwriting practices to
35 determine and document the debtor's reasonable ability to repay
36 the mortgage transaction at the mortgage transaction's fully
37 indexed rate.

38 (6) If a creditor offers a subprime mortgage transaction to a
39 debtor, the creditor shall establish an escrow account for the
40 payment of real estate taxes and insurance owed in connection with
41 the subprime mortgage transaction.

42 (7) This subsection applies to an adjustable rate mortgage

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1 transaction. At the same time that a creditor provides the good
 2 faith estimates required under the federal Real Estate Settlement
 3 Procedures Act (12 U.S.C. 2601 et seq.), as amended, the creditor
 4 shall provide a prospective debtor with a one (1) page disclosure
 5 document that includes the following information:

6 (a) The mortgage transaction's fully indexed rate.

7 (b) The maximum monthly payment that could be required
 8 under the terms of the mortgage transaction. The maximum
 9 monthly payment amount provided under this subdivision
 10 must include the following:

11 (i) Subject to subsection (8), if the creditor will establish an
 12 escrow account for the payment of taxes and insurance, a
 13 good faith estimate of the amount of real estate taxes and
 14 insurance payments that will be owed in connection with
 15 the mortgaged property on a monthly basis.

16 (ii) If the creditor will not establish an escrow account for
 17 the payment of taxes and insurance, a statement that the
 18 maximum monthly payment amount reported in the
 19 disclosure document does not include amounts that the
 20 debtor will owe for real estate taxes and insurance
 21 payments.

22 (8) A creditor, or any officer, agent, or employee of a creditor,
 23 that provides as part of the disclosure document required under
 24 subsection 7 a good faith estimate of the amount of real estate taxes
 25 and insurance payments that will be owed in connection with
 26 mortgaged property, as required by subsection (7)(b)(i), is not
 27 liable to:

28 (a) the debtor;

29 (b) a subsequent purchaser of the mortgaged property; or

30 (c) any other person;

31 if the estimate provided in the disclosure document under
 32 subsection (7) differs from the actual real estate taxes and
 33 insurance payments owed in connection with the mortgaged
 34 property at any time during the term of the mortgage transaction.

35 Sec. 111. (1) A person described in section 102(2) of this chapter
 36 that violates this chapter:

37 (a) is subject to a civil penalty imposed by the department in
 38 an amount not more than ten thousand dollars (\$10,000) per
 39 occurrence;

40 (b) is subject to IC 24-4.5-5-202;

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

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1 (d) except as provided in subsection (4), has no right to collect,
 2 receive, or retain any principal, interest, or other charges
 3 from a mortgage transaction; and
 4 (e) except as provided in subsection (4), is liable to the debtor
 5 for actual damages, statutory damages of two thousand
 6 dollars (\$2,000) per violation, costs, and attorney's fees.

7 (2) The department may sue:
 8 (a) to enjoin any conduct that constitutes or will constitute a
 9 violation of this chapter; and
 10 (b) for other equitable relief.

11 (3) The remedies provided in this section are cumulative but are
 12 not intended to be the exclusive remedies available to a debtor. A
 13 debtor is not required to exhaust any administrative remedies
 14 under this section or any other applicable law.

15 (4) Subsection (1)(d) and (1)(e) does not apply if the violation is
 16 the result of an accident or a bona fide error of computation.

17 **Sec. 112. (1) A person regularly engaged as a creditor in**
 18 **mortgage transactions shall post a bond with the department in an**
 19 **amount acceptable to the department but not less than three**
 20 **hundred thousand dollars (\$300,000).**

21 (2) A bond posted under subsection (1) must continue in effect
 22 for two (2) years after the creditor ceases operation in Indiana. The
 23 bond must be available to:

- 24 (a) pay damages and penalties to a consumer harmed by a
- 25 violation of this chapter; and
- 26 (b) fund regulatory costs incurred by the department in
- 27 remedying violations of this chapter.

28 **Sec. 113. A creditor engaged in mortgage transactions shall not**
 29 **commit nor cause to be committed any of the following acts:**

- 30 (a) Threatening to use or using the criminal process in any
- 31 state to collect on a mortgage transaction.
- 32 (b) Threatening to take action against a debtor that is
- 33 prohibited by this chapter.
- 34 (c) Making a misleading or deceptive statement concerning:
- 35 (i) a mortgage transaction; or
- 36 (ii) a consequence of entering into a mortgage transaction.
- 37 (d) Engaging in unfair, deceptive, or fraudulent practices in
- 38 the making of or collecting on a mortgage transaction.

39 **Sec. 114. The department may adopt rules under IC 4-22-2 to**
 40 **implement this chapter.**

41 SECTION 36. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007,
 42 SECTION 165, IS AMENDED TO READ AS FOLLOWS

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- 1 [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) As used in this chapter:
- 2 (1) "Consumer transaction" means a sale, lease, assignment,
- 3 award by chance, or other disposition of an item of personal
- 4 property, real property, a service, or an intangible, except
- 5 securities and policies or contracts of insurance issued by
- 6 corporations authorized to transact an insurance business under
- 7 the laws of the state of Indiana, with or without an extension of
- 8 credit, to a person for purposes that are primarily personal,
- 9 familial, charitable, agricultural, or household, or a solicitation to
- 10 supply any of these things. However, the term includes the
- 11 following:
- 12 (A) A transfer of structured settlement payment rights under
- 13 IC 34-50-2.
- 14 (B) An unsolicited advertisement sent to a person by telephone
- 15 facsimile machine offering a sale, lease, assignment, award by
- 16 chance, or other disposition of an item of personal property,
- 17 real property, a service, or an intangible.
- 18 (2) "Person" means an individual, corporation, the state of Indiana
- 19 or its subdivisions or agencies, business trust, estate, trust,
- 20 partnership, association, nonprofit corporation or organization, or
- 21 cooperative or any other legal entity.
- 22 (3) "Supplier" means the following:
- 23 (A) A seller, lessor, assignor, or other person who regularly
- 24 engages in or solicits consumer transactions, including
- 25 soliciting a consumer transaction by using a telephone
- 26 facsimile machine to transmit an unsolicited advertisement.
- 27 The term includes a manufacturer, wholesaler, or retailer,
- 28 whether or not the person deals directly with the consumer.
- 29 (B) A person who contrives, prepares, sets up, operates,
- 30 publicizes by means of advertisements, or promotes a pyramid
- 31 promotional scheme.
- 32 **(C) With respect to a deceptive act described in section**
- 33 **3(h) of this chapter, a creditor:**
- 34 **(i) as defined in IC 24-9-2-6, with respect to a home loan;**
- 35 **or**
- 36 **(ii) as defined in IC 24-4.5-1-301(8), with respect to a**
- 37 **mortgage transaction.**
- 38 (4) "Subject of a consumer transaction" means the personal
- 39 property, real property, services, or intangibles offered or
- 40 furnished in a consumer transaction.
- 41 (5) "Cure" as applied to a deceptive act, means either:
- 42 (A) to offer in writing to adjust or modify the consumer

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- 1 transaction to which the act relates to conform to the
 2 reasonable expectations of the consumer generated by such
 3 deceptive act and to perform such offer if accepted by the
 4 consumer; or
 5 (B) to offer in writing to rescind such consumer transaction
 6 and to perform such offer if accepted by the consumer.
- 7 The term includes an offer in writing of one (1) or more items of
 8 value, including monetary compensation, that the supplier
 9 delivers to a consumer or a representative of the consumer if
 10 accepted by the consumer.
- 11 (6) "Offer to cure" as applied to a deceptive act is a cure that:
 12 (A) is reasonably calculated to remedy a loss claimed by the
 13 consumer; and
 14 (B) includes a minimum additional amount that is the greater
 15 of:
 16 (i) ten percent (10%) of the value of the remedy under
 17 clause (A), but not more than four thousand dollars
 18 (\$4,000); or
 19 (ii) five hundred dollars (\$500);
 20 as compensation for attorney's fees, expenses, and other costs
 21 that a consumer may incur in relation to the deceptive act.
- 22 (7) "Uncured deceptive act" means a deceptive act:
 23 (A) with respect to which a consumer who has been damaged
 24 by such act has given notice to the supplier under section 5(a)
 25 of this chapter; and
 26 (B) either:
 27 (i) no offer to cure has been made to such consumer within
 28 thirty (30) days after such notice; or
 29 (ii) the act has not been cured as to such consumer within a
 30 reasonable time after the consumer's acceptance of the offer
 31 to cure.
- 32 (8) "Incurable deceptive act" means a deceptive act done by a
 33 supplier as part of a scheme, artifice, or device with intent to
 34 defraud or mislead. The term includes a failure of a transferee of
 35 structured settlement payment rights to timely provide a true and
 36 complete disclosure statement to a payee as provided under
 37 IC 34-50-2 in connection with a direct or indirect transfer of
 38 structured settlement payment rights.
- 39 (9) "Pyramid promotional scheme" means any program utilizing
 40 a pyramid or chain process by which a participant in the program
 41 gives a valuable consideration exceeding one hundred dollars
 42 (\$100) for the opportunity or right to receive compensation or

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1 other things of value in return for inducing other persons to
 2 become participants for the purpose of gaining new participants
 3 in the program. The term does not include ordinary sales of goods
 4 or services to persons who are not purchasing in order to
 5 participate in such a scheme.

6 (10) "Promoting a pyramid promotional scheme" means:

7 (A) inducing or attempting to induce one (1) or more other
 8 persons to become participants in a pyramid promotional
 9 scheme; or

10 (B) assisting another in promoting a pyramid promotional
 11 scheme.

12 (11) "Elderly person" means an individual who is at least
 13 sixty-five (65) years of age.

14 (12) "Telephone facsimile machine" means equipment that has
 15 the capacity to transcribe text or images, or both, from:

16 (A) paper into an electronic signal and to transmit that signal
 17 over a regular telephone line; or

18 (B) an electronic signal received over a regular telephone line
 19 onto paper.

20 (13) "Unsolicited advertisement" means material advertising the
 21 commercial availability or quality of:

22 (A) property;

23 (B) goods; or

24 (C) services;

25 that is transmitted to a person without the person's prior express
 26 invitation or permission, in writing or otherwise.

27 (b) As used in section 3(a)(15) of this chapter:

28 (1) "Directory assistance" means the disclosure of telephone
 29 number information in connection with an identified telephone
 30 service subscriber by means of a live operator or automated
 31 service.

32 (2) "Local telephone directory" refers to a telephone classified
 33 advertising directory or the business section of a telephone
 34 directory that is distributed by a telephone company or directory
 35 publisher to subscribers located in the local exchanges contained
 36 in the directory. The term includes a directory that includes
 37 listings of more than one (1) telephone company.

38 (3) "Local telephone number" refers to a telephone number that
 39 has the three (3) number prefix used by the provider of telephone
 40 service for telephones physically located within the area covered
 41 by the local telephone directory in which the number is listed. The
 42 term does not include long distance numbers or 800-, 888-, or

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1 900- exchange numbers listed in a local telephone directory.
2 SECTION 37. IC 24-5-0.5-3, AS AMENDED BY P.L.85-2006,
3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2008]: Sec. 3. (a) The following acts or representations as to
5 the subject matter of a consumer transaction, made orally, in writing,
6 or by electronic communication, by a supplier, are deceptive acts:
7 (1) That such subject of a consumer transaction has sponsorship,
8 approval, performance, characteristics, accessories, uses, or
9 benefits it does not have which the supplier knows or should
10 reasonably know it does not have.
11 (2) That such subject of a consumer transaction is of a particular
12 standard, quality, grade, style, or model, if it is not and if the
13 supplier knows or should reasonably know that it is not.
14 (3) That such subject of a consumer transaction is new or unused,
15 if it is not and if the supplier knows or should reasonably know
16 that it is not.
17 (4) That such subject of a consumer transaction will be supplied
18 to the public in greater quantity than the supplier intends or
19 reasonably expects.
20 (5) That replacement or repair constituting the subject of a
21 consumer transaction is needed, if it is not and if the supplier
22 knows or should reasonably know that it is not.
23 (6) That a specific price advantage exists as to such subject of a
24 consumer transaction, if it does not and if the supplier knows or
25 should reasonably know that it does not.
26 (7) That the supplier has a sponsorship, approval, or affiliation in
27 such consumer transaction the supplier does not have, and which
28 the supplier knows or should reasonably know that the supplier
29 does not have.
30 (8) That such consumer transaction involves or does not involve
31 a warranty, a disclaimer of warranties, or other rights, remedies,
32 or obligations, if the representation is false and if the supplier
33 knows or should reasonably know that the representation is false.
34 (9) That the consumer will receive a rebate, discount, or other
35 benefit as an inducement for entering into a sale or lease in return
36 for giving the supplier the names of prospective consumers or
37 otherwise helping the supplier to enter into other consumer
38 transactions, if earning the benefit, rebate, or discount is
39 contingent upon the occurrence of an event subsequent to the time
40 the consumer agrees to the purchase or lease.
41 (10) That the supplier is able to deliver or complete the subject of
42 the consumer transaction within a stated period of time, when the

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1 supplier knows or should reasonably know the supplier could not.
 2 If no time period has been stated by the supplier, there is a
 3 presumption that the supplier has represented that the supplier
 4 will deliver or complete the subject of the consumer transaction
 5 within a reasonable time, according to the course of dealing or the
 6 usage of the trade.
 7 (11) That the consumer will be able to purchase the subject of the
 8 consumer transaction as advertised by the supplier, if the supplier
 9 does not intend to sell it.
 10 (12) That the replacement or repair constituting the subject of a
 11 consumer transaction can be made by the supplier for the estimate
 12 the supplier gives a customer for the replacement or repair, if the
 13 specified work is completed and:
 14 (A) the cost exceeds the estimate by an amount equal to or
 15 greater than ten percent (10%) of the estimate;
 16 (B) the supplier did not obtain written permission from the
 17 customer to authorize the supplier to complete the work even
 18 if the cost would exceed the amounts specified in clause (A);
 19 (C) the total cost for services and parts for a single transaction
 20 is more than seven hundred fifty dollars (\$750); and
 21 (D) the supplier knew or reasonably should have known that
 22 the cost would exceed the estimate in the amounts specified in
 23 clause (A).
 24 (13) That the replacement or repair constituting the subject of a
 25 consumer transaction is needed, and that the supplier disposes of
 26 the part repaired or replaced earlier than seventy-two (72) hours
 27 after both:
 28 (A) the customer has been notified that the work has been
 29 completed; and
 30 (B) the part repaired or replaced has been made available for
 31 examination upon the request of the customer.
 32 (14) Engaging in the replacement or repair of the subject of a
 33 consumer transaction if the consumer has not authorized the
 34 replacement or repair, and if the supplier knows or should
 35 reasonably know that it is not authorized.
 36 (15) The act of misrepresenting the geographic location of the
 37 supplier by listing a fictitious business name or an assumed
 38 business name (as described in IC 23-15-1) in a local telephone
 39 directory if:
 40 (A) the name misrepresents the supplier's geographic location;
 41 (B) the listing fails to identify the locality and state of the
 42 supplier's business;

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1 (C) calls to the local telephone number are routinely forwarded
 2 or otherwise transferred to a supplier's business location that
 3 is outside the calling area covered by the local telephone
 4 directory; and
 5 (D) the supplier's business location is located in a county that
 6 is not contiguous to a county in the calling area covered by the
 7 local telephone directory.
 8 (16) The act of listing a fictitious business name or assumed
 9 business name (as described in IC 23-15-1) in a directory
 10 assistance data base if:
 11 (A) the name misrepresents the supplier's geographic location;
 12 (B) calls to the local telephone number are routinely forwarded
 13 or otherwise transferred to a supplier's business location that
 14 is outside the local calling area; and
 15 (C) the supplier's business location is located in a county that
 16 is not contiguous to a county in the local calling area.
 17 (17) That the supplier violated IC 24-3-4 concerning cigarettes for
 18 import or export.
 19 (18) That a supplier knowingly sells or resells a product to a
 20 consumer if the product has been recalled, whether by the order
 21 of a court or a regulatory body, or voluntarily by the
 22 manufacturer, distributor, or retailer unless the product has been
 23 repaired or modified to correct the defect that was the subject of
 24 the recall.
 25 (19) That the supplier violated 47 U.S.C. 227, including any rules
 26 or regulations issued under 47 U.S.C. 227.
 27 (b) Any representations on or within a product or its packaging or
 28 in advertising or promotional materials which would constitute a
 29 deceptive act shall be the deceptive act both of the supplier who places
 30 such representation thereon or therein, or who authored such materials,
 31 and such other suppliers who shall state orally or in writing that such
 32 representation is true if such other supplier shall know or have reason
 33 to know that such representation was false.
 34 (c) If a supplier shows by a preponderance of the evidence that an
 35 act resulted from a bona fide error notwithstanding the maintenance of
 36 procedures reasonably adopted to avoid the error, such act shall not be
 37 deceptive within the meaning of this chapter.
 38 (d) It shall be a defense to any action brought under this chapter that
 39 the representation constituting an alleged deceptive act was one made
 40 in good faith by the supplier without knowledge of its falsity and in
 41 reliance upon the oral or written representations of the manufacturer,
 42 the person from whom the supplier acquired the product, any testing

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1 organization, or any other person provided that the source thereof is
2 disclosed to the consumer.

3 (e) For purposes of subsection (a)(12), a supplier that provides
4 estimates before performing repair or replacement work for a customer
5 shall give the customer a written estimate itemizing as closely as
6 possible the price for labor and parts necessary for the specific job
7 before commencing the work.

8 (f) For purposes of subsection (a)(15), a telephone company or other
9 provider of a telephone directory or directory assistance service or its
10 officer or agent is immune from liability for publishing the listing of a
11 fictitious business name or assumed business name of a supplier in its
12 directory or directory assistance data base unless the telephone
13 company or other provider of a telephone directory or directory
14 assistance service is the same person as the supplier who has
15 committed the deceptive act.

16 (g) For purposes of subsection (a)(18), it is an affirmative defense
17 to any action brought under this chapter that the product has been
18 altered by a person other than the defendant to render the product
19 completely incapable of serving its original purpose.

20 **(h) In addition to the acts set forth in subsection (a), a violation**
21 **of:**

22 **(1) IC 24-9 (concerning home loans); or**

23 **(2) IC 24-4.5-8 (concerning mortgage transactions);**

24 **is a deceptive act under this chapter.**

25 SECTION 38. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006,
26 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2008]: Sec. 4. (a) **Except as provided in subsection (l)**, a
28 person relying upon an uncured or incurable deceptive act may bring
29 an action for the damages actually suffered as a consumer as a result of
30 the deceptive act or five hundred dollars (\$500), whichever is greater.
31 The court may increase damages for a willful deceptive act in an
32 amount that does not exceed the greater of:

33 (1) three (3) times the actual damages of the consumer suffering
34 the loss; or

35 (2) one thousand dollars (\$1,000).

36 Except as provided in subsection (j), the court may award reasonable
37 attorney fees to the party that prevails in an action under this
38 subsection. **Except for a deceptive act described in section 3(h) of**
39 **this chapter, and except for purchases of time shares and camping**
40 **club memberships**, this subsection does not apply to a consumer
41 transaction in real property, including a claim or action involving a
42 construction defect (as defined in IC 32-27-3-1(5)) brought against a

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1 construction professional (as defined in IC 32-27-3-1(4)). ~~except for~~
 2 ~~purchases of time shares and camping club memberships.~~ This
 3 subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12,
 4 or IC 24-5-14. Actual damages awarded to a person under this section
 5 have priority over any civil penalty imposed under this chapter.

6 (b) Any person who is entitled to bring an action under subsection
 7 (a) on the person's own behalf against a supplier for damages for a
 8 deceptive act may bring a class action against such supplier on behalf
 9 of any class of persons of which that person is a member and which has
 10 been damaged by such deceptive act, subject to and under the Indiana
 11 Rules of Trial Procedure governing class actions, except as herein
 12 expressly provided. Except as provided in subsection (j), the court may
 13 award reasonable attorney fees to the party that prevails in a class
 14 action under this subsection, provided that such fee shall be determined
 15 by the amount of time reasonably expended by the attorney and not by
 16 the amount of the judgment, although the contingency of the fee may
 17 be considered. Any money or other property recovered in a class action
 18 under this subsection which cannot, with due diligence, be restored to
 19 consumers within one (1) year after the judgment becomes final shall
 20 be returned to the party depositing the same. **Except for a deceptive**
 21 **act described in section 3(h) of this chapter, and except for**
 22 **purchases of time shares and camping club memberships,** this
 23 subsection does not apply to a consumer transaction in real property.
 24 ~~except for purchases of time shares and camping club memberships.~~
 25 Actual damages awarded to a class have priority over any civil penalty
 26 imposed under this chapter.

27 (c) The attorney general may bring an action to enjoin a deceptive
 28 act, **including a deceptive act described in section 3(h) of this**
 29 **chapter.** However, **with respect to all other consumer transactions**
 30 **involving real property,** the attorney general may seek to enjoin
 31 patterns of incurable deceptive acts. ~~with respect to consumer~~
 32 ~~transactions in real property.~~ In addition, the court may:

- 33 (1) issue an injunction;
- 34 (2) order the supplier to make payment of the money unlawfully
 35 received from the aggrieved consumers to be held in escrow for
 36 distribution to aggrieved consumers;
- 37 (3) order the supplier to pay to the state the reasonable costs of
 38 the attorney general's investigation and prosecution related to the
 39 action; and
- 40 (4) provide for the appointment of a receiver.

41 (d) In an action under subsection (a), (b), or (c), the court may void
 42 or limit the application of contracts or clauses resulting from deceptive

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1 acts and order restitution to be paid to aggrieved consumers.

2 (e) In any action under subsection (a) or (b), upon the filing of the
3 complaint or on the appearance of any defendant, claimant, or any
4 other party, or at any later time, the trial court, the supreme court, or the
5 court of appeals may require the plaintiff, defendant, claimant, or any
6 other party or parties to give security, or additional security, in such
7 sum as the court shall direct to pay all costs, expenses, and
8 disbursements that shall be awarded against that party or which that
9 party may be directed to pay by any interlocutory order by the final
10 judgment or on appeal.

11 (f) **Except as provided in subsection (l)**, any person who violates
12 the terms of an injunction issued under subsection (c) shall forfeit and
13 pay to the state a civil penalty of not more than fifteen thousand dollars
14 (\$15,000) per violation. For the purposes of this section, the court
15 issuing an injunction shall retain jurisdiction, the cause shall be
16 continued, and the attorney general acting in the name of the state may
17 petition for recovery of civil penalties. Whenever the court determines
18 that an injunction issued under subsection (c) has been violated, the
19 court shall award reasonable costs to the state.

20 (g) If a court finds any person has knowingly violated section 3 or
21 10 of this chapter, other than section 3(a)(19) **or 3(h)** of this chapter,
22 the attorney general, in an action pursuant to subsection (c), may
23 recover from the person on behalf of the state a civil penalty of a fine
24 not exceeding five thousand dollars (\$5,000) per violation.

25 (h) If a court finds that a person has violated section 3(a)(19) of this
26 chapter, the attorney general, in an action under subsection (c), may
27 recover from the person on behalf of the state a civil penalty as follows:

28 (1) For a knowing or intentional violation, one thousand five
29 hundred dollars (\$1,500).

30 (2) For a violation other than a knowing or intentional violation,
31 five hundred dollars (\$500).

32 A civil penalty recovered under this subsection shall be deposited in
33 the consumer protection division telephone solicitation fund
34 established by IC 24-4.7-3-6 to be used for the administration and
35 enforcement of section 3(a)(19) of this chapter.

36 (i) An elderly person relying upon an uncured or incurable
37 deceptive act, including an act related to hypnotism, may bring an
38 action to recover treble damages, if appropriate.

39 (j) An offer to cure is:

40 (1) not admissible as evidence in a proceeding initiated under this
41 section unless the offer to cure is delivered by a supplier to the
42 consumer or a representative of the consumer before the supplier

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1 files the supplier's initial response to a complaint; and
 2 (2) only admissible as evidence in a proceeding initiated under
 3 this section to prove that a supplier is not liable for attorney's fees
 4 under subsection (k).

5 If the offer to cure is timely delivered by the supplier, the supplier may
 6 submit the offer to cure as evidence to prove in the proceeding in
 7 accordance with the Indiana Rules of Trial Procedure that the supplier
 8 made an offer to cure.

9 (k) A supplier may not be held liable for the attorney's fees and
 10 court costs of the consumer that are incurred following the timely
 11 delivery of an offer to cure as described in subsection (j) unless the
 12 actual damages awarded, not including attorney's fees and costs, exceed
 13 the value of the offer to cure.

14 **(l) The following apply to a deceptive act described in section**
 15 **3(h) of this chapter:**

16 **(1) A person aggrieved by an uncured or incurable deceptive**
 17 **act described in section 3(h) of this chapter may bring an**
 18 **action under subsection (a) for the damages actually suffered**
 19 **as a consumer as a result of the deceptive act. The court may**
 20 **increase damages for a willful deceptive act in an amount that**
 21 **does not exceed three (3) times the actual damages of the**
 22 **consumer suffering the loss.**

23 **(2) For a violation of an injunction issued under subsection**
 24 **(c), a civil penalty of not more than thirty thousand dollars**
 25 **(\$30,000) may be imposed under subsection (f).**

26 **(3) If a court finds any person has knowingly violated section**
 27 **3(h) of this chapter, the attorney general, in an action**
 28 **pursuant to subsection (c), may recover from the person on**
 29 **behalf of the state a civil penalty of a fine not exceeding ten**
 30 **thousand dollars (\$10,000) per violation. A civil penalty**
 31 **recovered under this subdivision shall be deposited in the**
 32 **homeowner protection unit account established by**
 33 **IC 4-6-12-9.**

34 SECTION 39. IC 24-5-0.5-8 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **(a) Except as**
 36 **provided in subsection (b), a person who commits an incurable**
 37 **deceptive act is subject to a civil penalty of a fine of not more than five**
 38 **hundred dollars (\$500) for each violation. The attorney general, acting**
 39 **in the name of the state, has the exclusive right to petition for recovery**
 40 **of such a fine, and this fine may be recovered only in an action brought**
 41 **under section 4(c) of this chapter.**

42 **(b) A person who commits an incurable deceptive act described**

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1 in section 3(h) of this chapter is subject to a civil penalty of a fine
2 of not more than one thousand dollars (\$1,000) for each violation.
3 The attorney general, acting in the name of the state, has the
4 exclusive right to petition for recovery of the fine, and the fine may
5 be recovered only in an action brought under section 4(c) of this
6 chapter.

7 SECTION 40. IC 24-9-3-1.1 IS ADDED TO THE INDIANA
8 CODE AS A NEW SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2008]: Sec. 1.1. (a) As used in this section,
10 "creditworthiness", with respect to a prospective borrower, means
11 those factors likely to affect the prospective borrower's ability to
12 repay a home loan at the home loan's trigger rate, including the
13 following:

- 14 (1) The prospective borrower's present and future:
 - 15 (A) income, not including overtime payments, seasonal
 - 16 compensation, or other irregular income;
 - 17 (B) expenses, including property taxes and insurance
 - 18 payments owed in connection with the home that is the
 - 19 subject of the home loan;
 - 20 (C) assets; and
 - 21 (D) liabilities.

- 22 (2) The prospective borrower's credit history.
- 23 (3) Any other factor likely to affect the prospective borrower's
- 24 ability to repay the home loan at the home loan's trigger rate.

25 (b) For purposes of this section, a creditor conducts a
26 "reasonable inquiry" into a prospective borrower's
27 creditworthiness if the creditor:

- 28 (1) obtains a consumer report (as defined in IC 24-5-24-2) or
- 29 other information maintained by a consumer reporting
- 30 agency (as defined in IC 24-5-24-3) with respect to the
- 31 prospective borrower; and
- 32 (2) obtains information about the prospective borrower
- 33 through:
 - 34 (A) a current or past employer of the prospective
 - 35 borrower;
 - 36 (B) public records; or
 - 37 (C) any other legal or commercially reasonable means.

38 (c) As used in this section, "stated income or no documentation
39 loan" means a home loan with respect to which a creditor:

- 40 (1) relies solely on a prospective borrower's written or oral
- 41 statement of the prospective borrower's creditworthiness; and
- 42 (2) does not independently verify the accuracy of the

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1 prospective borrower's statement by conducting a reasonable
 2 inquiry into the prospective borrower's creditworthiness;
 3 in making an underwriting determination with respect to the
 4 prospective borrower.

5 (d) A creditor may not do either of the following:

6 (1) Recommend or issue a stated income or no documentation
 7 loan to a prospective borrower.

8 (2) Recommend or issue a home loan to a prospective
 9 borrower without reasonable grounds for determining that
 10 the home loan is suitable for the prospective borrower based
 11 on a reasonable inquiry into the prospective borrower's
 12 creditworthiness. A creditor, or any officer, agent, or
 13 employee of a creditor, that conducts a reasonable inquiry
 14 under this section is not liable to:

15 (A) a borrower or prospective borrower;

16 (B) a subsequent purchaser of a home that was the subject
 17 of a home loan on which a borrower has defaulted; or

18 (C) any other person;

19 for a determination made under this section, if a borrower for
 20 whom the creditor determines a home loan is suitable under
 21 this section later defaults on the home loan issued by the
 22 creditor.

23 SECTION 41. IC 24-9-3-4.5 IS ADDED TO THE INDIANA CODE
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 25 1, 2008]: Sec. 4.5. (a) This section applies to a home loan that first
 26 becomes sixty (60) days past due after June 30, 2008.

27 (b) Subject to subsection (c), whenever a home loan becomes
 28 sixty (60) days past due, the creditor, or a loan servicer acting on
 29 the creditor's behalf, shall provide written notice of the
 30 delinquency to the borrower. The notice required under this
 31 section must offer the borrower:

32 (1) a temporary forbearance with respect to the home loan,
 33 subject to:

34 (A) terms agreed upon by the creditor and the borrower;
 35 and

36 (B) any applicable increase in the outstanding principal
 37 balance of the home loan as allowed under IC 24-9-4-4(b);

38 (2) a payment plan; or

39 (3) any other option for the refinancing, restructuring, or
 40 workout of the existing indebtedness.

41 (c) Any option offered by the creditor under subsection (b) may
 42 not increase the interest rate on the home loan because of the

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1 delinquency. However, this subsection does not apply to interest
2 rate changes in a variable rate home loan that are otherwise
3 consistent with the provisions of the home loan documents, if the
4 change in the interest rate is not triggered by the delinquency.

5 SECTION 42. IC 24-9-3-6 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) A creditor may
7 not charge a fee for informing or transmitting to a person the balance
8 due to pay off a home loan or to provide a written release upon
9 prepayment. A creditor must provide a payoff balance not later than ten
10 (10) ~~business~~ **calendar** days after the request is received by the
11 creditor. ~~(b)~~ For purposes of this ~~section~~, **subsection**, "fee" does not
12 include actual charges incurred by a creditor for express or priority
13 delivery requested by the borrower of home loan documents to the
14 borrower.

15 **(b) A creditor, a servicer, or the creditor's agent shall respond**
16 **to a written offer made in connection with a proposed short sale**
17 **not later than ten (10) calendar days after the date of the offer. As**
18 **used in this subsection, "short sale" means a transaction in which**
19 **the property that is the subject of a home loan is sold for an**
20 **amount that is less than the amount of the borrower's outstanding**
21 **obligation on the home loan. A creditor, a servicer, or a creditor's**
22 **agent that fails to respond to an offer within the time prescribed by**
23 **this subsection is liable under the terms set forth in**
24 **IC 24-4.5-3-209(3), as if the creditor, servicer, or agent had failed**
25 **to provide a consumer loan payoff amount.**

26 SECTION 43. IC 24-9-4-1 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 1. The following
28 additional limitations and prohibited practices apply to a high cost
29 home loan:

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

32 (2) **For a high cost home loan other than a subprime mortgage**
33 **transaction (as defined in IC 24-4.5-8-107):**

34 **(A)** prepayment fees or penalties may not be included in the
35 loan documents for ~~a~~ **the** high cost home loan or charged to
36 the borrower if the fees or penalties exceed in total two percent
37 (2%) of the high cost home loan amount prepaid during the
38 first twenty-four (24) months after the high cost home loan
39 closing; **and**

40 ~~(3)~~ **(B)** a prepayment penalty may not be contracted for after
41 the second year following the high cost home loan closing.

42 **(3) For a high cost home loan that is a subprime mortgage**

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1 **transaction (as defined in IC 24-4.5-8-107), the documents for**
 2 **the loan may not provide for, and a creditor issuing the loan**
 3 **may not charge the debtor, prepayment penalties or fees.**

4 (4) A creditor may not include a prepayment penalty fee in a high
 5 cost home loan **described in subdivision (2)** unless the creditor
 6 offers the borrower the option of choosing a loan product without
 7 a prepayment fee. The terms of the offer must be made in writing
 8 and must be initialed by the borrower. The document containing
 9 the offer must be clearly labeled in large bold type and must
 10 include the following disclosure:

11 "LOAN PRODUCT CHOICE

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

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

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

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

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

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

29 SECTION 44. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE
 30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2008]:

32 **Chapter 4.5. Residential Real Estate Closings**

33 **Sec. 1. This chapter applies to a home loan closing that takes**
 34 **place after June 30, 2008.**

35 **Sec. 2. As used in this chapter, "closing documents" refers to:**

36 **(1) the documents that a settlement service provider is**
 37 **required to provide to a borrower at or before the closing of**
 38 **a home loan, in accordance with the requirements of the**
 39 **federal Real Estate Settlement Procedures Act (12 U.S.C. 2601**
 40 **et seq.) as amended;**

41 **(2) the form prescribed by the department of local**
 42 **government finance under IC 6-1.1-12-43(b);**

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1 **(3) the form required to be provided by a closing agent under**
 2 **IC 6-1.1-12-43(d)(2); and**
 3 **(4) any other documents required by law to be provided to a**
 4 **borrower at or before the closing of a home loan.**
 5 **Sec. 3. (a) As used in this chapter, "settlement service provider"**
 6 **means a person that provides services in connection with the**
 7 **closing of a real estate transaction, including the provision of title**
 8 **examinations or title insurance.**
 9 **(b) The term includes a closing agent (as defined in**
 10 **IC 6-1.1-12-43(a)(2)).**
 11 **Sec. 4. A creditor shall provide a prospective borrower with a**
 12 **notice that states that the prospective borrower has a right to**
 13 **receive, at least forty-eight (48) hours before the closing of a home**
 14 **loan, the closing documents with respect to the home loan. The**
 15 **creditor shall provide the notice required by this section at the**
 16 **same time that the creditor provides the good faith estimates**
 17 **required under the federal Real Estate Settlement Procedures Act**
 18 **(12 U.S.C. 2601 et seq.) as amended.**
 19 **Sec. 5. Not later than forty-eight (48) hours before the closing of**
 20 **a home loan, a settlement service provider shall make available to**
 21 **the borrower the closing documents with respect to the home loan.**
 22 **The settlement service provider shall make the closing documents**
 23 **available to the borrower:**
 24 **(1) at the office of the creditor or the settlement service**
 25 **provider;**
 26 **(2) through the United States mail;**
 27 **(3) by facsimile; or**
 28 **(4) through any other commercially reasonable means.**
 29 **SECTION 45. IC 24-9-5-4, AS AMENDED BY P.L.3-2005,**
 30 **SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 31 **JULY 1, 2008]: Sec. 4. (a) A person who violates this article is liable**
 32 **to a person who is a party to the home loan transaction that gave rise to**
 33 **the violation for the following:**
 34 **(1) Actual damages, including consequential damages. A person**
 35 **is not required to demonstrate reliance in order to receive actual**
 36 **damages.**
 37 **(2) Statutory damages equal to ~~two (2)~~ four (4) times the finance**
 38 **charges agreed to in the home loan agreement.**
 39 **(3) Costs and reasonable attorney's fees.**
 40 **(b) A person may be granted injunctive, declaratory, and other**
 41 **equitable relief as the court determines appropriate in an action to**
 42 **enforce compliance with this chapter.**

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1 (c) The right of rescission granted under 15 U.S.C. 1601 et seq. for
2 a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.)
3 is available to a person acting only in an individual capacity by way of
4 recoupment as a defense against a party foreclosing on a home loan at
5 any time during the term of the loan. Any recoupment claim asserted
6 under this provision is limited to the amount required to reduce or
7 extinguish the person's liability under the home loan plus amounts
8 required to recover costs, including reasonable attorney's fees. This
9 article shall not be construed to limit the recoupment rights available
10 to a person under any other law.

11 (d) The remedies provided in this section are cumulative but are not
12 intended to be the exclusive remedies available to a person. Except as
13 provided in subsection (e), a person is not required to exhaust any
14 administrative remedies under this article or under any other applicable
15 law.

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

- 18 (1) notify the homeowner protection unit established by
- 19 IC 4-6-12-2 of the alleged violation giving rise to the action; and
- 20 (2) allow the homeowner protection unit at least ninety (90) days
- 21 to institute appropriate administrative and civil action to redress
- 22 a violation.

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

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

28 SECTION 46. IC 24-9-8-1 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. A person who
30 knowingly or intentionally violates this article commits:

- 31 (1) a Class ~~A misdemeanor~~; **D felony**; and
- 32 (2) an act that is actionable by the attorney general under
- 33 IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

34 SECTION 47. IC 24-9-8-3 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The attorney
36 general may bring an action to enjoin a violation of this article. A court
37 in which the action is brought may:

- 38 (1) issue an injunction;
- 39 (2) order a person to make restitution;
- 40 (3) order a person to reimburse the state for reasonable costs of
- 41 the attorney general's investigation and prosecution of the
- 42 violation of this article; and

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

3 (b) A person who violates an injunction under this section is subject
4 to a civil penalty of not more than ~~ten~~ **twenty** thousand dollars
5 ~~(\$10,000)~~ **(\$20,000)** per violation.

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

8 SECTION 48. IC 25-34.1-8-10 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. **(a)** To be licensed
10 or certified as a real estate appraiser, an individual must meet the
11 following conditions:

12 (1) Not have a conviction for any of the following:

13 (A) An act that would constitute a ground for disciplinary
14 sanction under IC 25-1-11.

15 (B) A crime that has a direct bearing on the individual's ability
16 to practice competently.

17 (C) Fraud or material deception in the course of professional
18 services or activities.

19 (D) A crime that indicates the individual has the propensity to
20 endanger the public.

21 (2) Have satisfied the requirements established under
22 IC 25-34.1-3-8(f).

23 **(b) After June 30, 2008, the board shall require each applicant**
24 **for initial licensure or certification under this chapter to submit**
25 **fingerprints for a national criminal history background check (as**
26 **defined in IC 10-13-3-12) by the Federal Bureau of Investigation,**
27 **for use by the board in determining whether the applicant should**
28 **be denied licensure or certification under this chapter for any**
29 **reason set forth in subsection (a)(1). The applicant shall pay any**
30 **fees or costs associated with the fingerprints and background check**
31 **required under this subsection. The board may not release the**
32 **results of a background check described in this subsection to any**
33 **private entity.**

34 **(c) The board may request evidence of compliance with this**
35 **section in accordance with subsection (d). Evidence of compliance**
36 **with this section may include any of the following:**

37 **(1) Subject to subsections (b) and (d)(2), criminal background**
38 **checks, including a national criminal history background**
39 **check (as defined in IC 10-13-3-12) by the Federal Bureau of**
40 **Investigation.**

41 **(2) Credit histories.**

42 **(3) Other background checks considered necessary by the**

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board.

(d) The board may request evidence of compliance with this section at any of the following times:

- (1) The time of application for an initial license or certificate.**
- (2) The time of renewal of a license or certificate. However, if the board seeks evidence of compliance through a criminal background check described in subsection (c)(1), the board must consider:**
 - (A) the resources and staffing available to the state police department to process or conduct a criminal background check in a timely manner;**
 - (B) the length of time that has elapsed since the most recent criminal background check was conducted with respect to the applicant for renewal; and**
 - (C) the financial or administrative burdens that a criminal background check will place on the applicant for renewal.**
- (3) Any other time considered necessary by the board.**

(e) The commission, upon recommendation of the board, shall adopt rules under IC 4-22-2 to implement this section.

SECTION 49. IC 27-7-3-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. (a) Not later than January 1, 2009, the department shall establish and maintain a data base that serves as a central repository for the sales disclosure form data submitted to the department by county assessors under IC 6-1.1-5.5-3. The department shall make the information stored in the data base accessible to:

- (1) each entity described in IC 4-6-12-4; and**
- (2) the homeowner protection unit established under IC 4-6-12-2.**

(b) The department shall establish uniform procedures for:

- (1) receiving and storing the information received from county assessors under IC 6-1.1-5.5-3; and**
- (2) transmitting, or otherwise making available, the information stored in the data base to:**
 - (A) each entity described in IC 4-6-12-4; and**
 - (B) the homeowner protection unit established under IC 4-6-12-2.**

SECTION 50. IC 32-29-7-3, AS AMENDED BY P.L.240-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the

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1 execution of a judgment or decree of sale for a period of three (3)
2 months after the filing of a complaint in the proceeding. However:

3 (1) the period is:

4 (A) twelve (12) months in a proceeding for the foreclosure of
5 a mortgage executed before January 1, 1958; and

6 (B) six (6) months in a proceeding for the foreclosure of a
7 mortgage executed after December 31, 1957, but before July
8 1, 1975; and

9 (2) if the court finds that the mortgaged real estate is residential
10 real estate and ~~has been abandoned~~, **is vacant**, a judgment or
11 decree of sale may be executed on the date the judgment of
12 foreclosure or decree of sale is entered, regardless of the date the
13 mortgage is executed.

14 (b) A judgment and decree in a proceeding to foreclose a mortgage
15 that is entered by a court having jurisdiction may be filed with the clerk
16 in any county as provided in IC 33-32-3-2. **Subject to subsection (i)**,
17 after the period set forth in subsection (a) expires, a person who may
18 enforce the judgment and decree may file a praecipe with the clerk in
19 any county where the judgment and decree is filed, and the clerk shall
20 promptly issue and certify to the sheriff of that county a copy of the
21 judgment and decree under the seal of the court.

22 (c) Upon receiving a certified judgment under subsection (b), the
23 sheriff shall, subject to section 4 of this chapter **and subsection (i)**, sell
24 the mortgaged premises or as much of the mortgaged premises as
25 necessary to satisfy the judgment, interest, and costs at public auction
26 at the office of the sheriff or at another location that is reasonably likely
27 to attract higher competitive bids. The sheriff shall schedule the date
28 and time of the sheriff's sale for a time certain between the hours of 10
29 a.m. and 4 p.m. on any day of the week except Sunday.

30 (d) Before selling mortgaged property, the sheriff must advertise the
31 sale by publication once each week for three (3) successive weeks in
32 a daily or weekly newspaper of general circulation. The sheriff shall
33 publish the advertisement in at least one (1) newspaper published and
34 circulated in each county where the real estate is situated. The first
35 publication shall be made at least thirty (30) days before the date of
36 sale. At the time of placing the first advertisement by publication, the
37 sheriff shall also serve a copy of the written or printed notice of sale
38 upon each owner of the real estate. Service of the written notice shall
39 be made as provided in the Indiana Rules of Trial Procedure governing
40 service of process upon a person. The sheriff shall charge a fee of ten
41 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional
42 owner for service of written notice under this subsection. The fee is:

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- 1 (1) a cost of the proceeding;
- 2 (2) to be collected as other costs of the proceeding are collected;
- 3 and
- 4 (3) to be deposited in the county general fund for appropriation
- 5 for operating expenses of the sheriff's department.

6 (e) The sheriff also shall post written or printed notices of the sale
 7 in at least three (3) public places in each township in which the real
 8 estate is situated and at the door of the courthouse of each county in
 9 which the real estate is located.

10 (f) If the sheriff is unable to procure the publication of a notice
 11 within the county, the sheriff may dispense with publication. The
 12 sheriff shall state that the sheriff was not able to procure the
 13 publication and explain the reason why publication was not possible.

14 (g) Notices under subsections (d) and (e) must contain a statement,
 15 for informational purposes only, of the location of each property by
 16 street address, if any, or other common description of the property other
 17 than legal description. A misstatement in the informational statement
 18 under this subsection does not invalidate an otherwise valid sale.

19 (h) The sheriff may charge an administrative fee of not more than
 20 two hundred dollars (\$200) with respect to a proceeding referred to in
 21 subsection (b) for actual costs directly attributable to the administration
 22 of the sale under subsection (c). The fee is:

- 23 (1) payable by the person seeking to enforce the judgment and
- 24 decree; and
- 25 (2) due at the time of filing of the praecipe;

26 under subsection (b).

27 **(i) This subsection applies to a foreclosure proceeding that is**
 28 **initiated by the filing of a complaint by the mortgagee or the**
 29 **mortgagee's assignee after June 30, 2008. Not later than five (5)**
 30 **business days after the filing of a praecipe under subsection (b), the**
 31 **clerk shall issue and certify to the sheriff of the county a copy of**
 32 **the judgment or decree under the seal of the court. The sheriff**
 33 **shall conduct the sale required by subsection (c) not later than**
 34 **ninety (90) days after receipt of the judgment or decree from the**
 35 **clerk under this subsection.**

36 SECTION 51. IC 34-30-2-16.6 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16.6. IC 6-1.1-12-43
 38 (Concerning a closing ~~agent's~~ **agent for** failure to provide ~~a form~~ **a**
 39 **customer with certain forms** concerning property tax benefits, **or for**
 40 **any determination made with respect to a customer's eligibility for**
 41 **a benefit).**

42 SECTION 52. IC 34-30-2-96.4 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2008]: **Sec. 96.4. IC 24-4.5-8-110(8)**
3 **(Concerning a creditor's estimate of the monthly real estate taxes**
4 **and insurance payments that will be owed in connection with**
5 **property in a mortgage transaction).**

6 SECTION 53. IC 34-30-2-96.7 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2008]: **Sec. 96.7. IC 24-9-3-1.1 (Concerning**
9 **a creditor's determination that a home loan is suitable for a**
10 **borrower).**

11 SECTION 54. THE FOLLOWING ARE REPEALED [EFFECTIVE
12 JANUARY 1, 2009]: IC 24-4.5-3-105; IC 24-4.5-5-201.

13 SECTION 55. [EFFECTIVE UPON PASSAGE] (a) **As used in this**
14 **SECTION, "task force" refers to the mortgage lending and fraud**
15 **prevention task force created under subsection (b).**

16 (b) **Not later than May 1, 2008, the following agencies shall**
17 **create the mortgage lending and fraud prevention task force by**
18 **each appointing an equal number of representatives to serve on the**
19 **task force:**

20 (1) **The securities division of the office of the secretary of state**
21 **established under IC 23-19-6-1(a).**

22 (2) **The homeowner protection unit established by the**
23 **attorney general under IC 4-6-12-2.**

24 (3) **The department of financial institutions established by**
25 **IC 28-11-1-1.**

26 (4) **The department of insurance created by IC 27-1-1-1.**

27 (5) **The Indiana real estate commission created by**
28 **IC 25-34.1-2-1.**

29 (6) **The real estate appraiser licensure and certification board**
30 **created by IC 25-34.1-8-1.**

31 (c) **The members of the task force shall annually appoint a chair**
32 **from among the members of the task force. Each year, the**
33 **chairmanship shall rotate among the agencies set forth in**
34 **subsection (b).**

35 (d) **Subject to subsection (e), beginning not later than July 2008,**
36 **the task force shall meet each month to:**

37 (1) **coordinate the state's efforts to:**

38 (A) **regulate the various participants involved in**
39 **originating, issuing, and closing home loans;**

40 (B) **enforce state laws and rules concerning mortgage**
41 **lending practices and mortgage fraud; and**

42 (C) **prevent fraudulent practices in the home loan industry**

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1 and investigate and prosecute cases involving mortgage
2 fraud; and
3 (2) share information and resources necessary for the efficient
4 administration of the tasks set forth in subdivision (1).
5 (e) With respect to any meeting of the task force:
6 (1) one (1) or more members of the task force may participate
7 in the meeting; or
8 (2) the meeting may be conducted in its entirety;
9 by means of a conference telephone or similar communications
10 equipment by which all persons participating in the meeting can
11 communicate with each other. Participation by the means
12 described in this subsection constitutes presence in person at the
13 meeting.
14 (f) Beginning in 2008, not later than November 1 of each year,
15 the task force shall report to the legislative council on the activities
16 of the task force during the most recent state fiscal year. The
17 report required under this subsection must include:
18 (1) information on the regulatory activities of each agency
19 described in subsection (b), including a description of any:
20 (A) investigations conducted; or
21 (B) disciplinary actions taken or criminal prosecutions
22 pursued;
23 with respect to the professions involved in originating, issuing,
24 and closing home loans;
25 (2) a description of any challenges:
26 (A) encountered by the task force during the most recent
27 state fiscal year; or
28 (B) anticipated by the task force in the current state fiscal
29 year; in
30 carrying out the duties set forth in subsection (d);
31 (3) any additional information required by the legislative
32 council; and
33 (4) any recommendations by the task force for legislation
34 necessary to assist the task force in carrying out the duties set
35 forth in subsection (d).
36 A report to the legislative council under this subsection must be in
37 an electronic format under IC 5-14-6.
38 SECTION 56. [EFFECTIVE UPON PASSAGE] (a) As used in this
39 SECTION, "authority" refers to the Indiana housing and
40 community development authority created by IC 5-20-1-3.
41 (b) Notwithstanding IC 6-3.1-32-15, as added by this act, the
42 authority shall adopt rules to certify home ownership education

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1 efforts under IC 6-3.1-32, as added by this act, in the same manner
2 as emergency rules are adopted under IC 4-22-2-37.1. Any rules
3 adopted under this SECTION must be adopted not later than
4 September 1, 2008. A rule adopted under this SECTION expires on
5 the earlier of:

6 (1) the date the rule is adopted by the authority under
7 IC 4-22-2-24 through IC 4-22-2-36; or

8 (2) January 1, 2010.

9 (c) This SECTION expires January 1, 2010.

10 SECTION 57. [EFFECTIVE UPON PASSAGE] (a) As used in this
11 SECTION, "authority" refers to the Indiana housing and
12 community development authority created by IC 5-20-1-3.

13 (b) As used in this SECTION, "mortgage transaction" has the
14 meaning set forth in IC 24-4.5-8-104.

15 (c) Not later than November 1, 2008, the authority shall provide
16 a report to the legislative council that includes the following:

17 (1) An identification of:

18 (A) new sources of funding that can be used to assist
19 Indiana homeowners in refinancing their existing
20 mortgage transactions; or

21 (B) existing sources of funding that can be directed or
22 redirected to assist Indiana homeowners in refinancing
23 their existing mortgage transactions;

24 in order to prevent the foreclosure of the homes secured by
25 homeowners' existing mortgage transactions.

26 (2) A plan for the rehabilitation of neighborhoods or
27 communities in Indiana that have been adversely or
28 disproportionately affected by mortgage foreclosures. The
29 plan required by this subdivision must include an
30 identification of the following:

31 (A) The areas in Indiana that have been adversely or
32 disproportionately affected by mortgage foreclosures,
33 including any statistics or data used to identify the areas.

34 (B) New or existing sources of funding that can be directed
35 or redirected to the proposed rehabilitation efforts.

36 (3) Any recommendations for legislation that the authority
37 determines is needed to accomplish the objectives described
38 in subdivisions (1) and (2).

39 (4) Any other recommendations of the authority concerning:

40 (A) the prevention of mortgage foreclosures; or

41 (B) the rehabilitation of neighborhoods or communities
42 adversely or disproportionately affected by mortgage

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foreclosures.

(d) The report to the legislative council required by this SECTION must be in an electronic format under IC 5-14-6.

(e) This SECTION expires January 1, 2010.

SECTION 58. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1.

(b) As used in this SECTION, "director" refers to the director of the department of financial institutions appointed under IC 28-11-2-1.

(c) The commissioner and the director shall cooperate to determine the appropriate state agency or department to oversee the regulation of a person that is, has been, or may be subject to regulation, licensure, or registration under both:

- (1) IC 23-2-5; and**
- (2) IC 24-4.5, as amended by this act.**

(d) The commissioner and the director shall issue joint guidelines to address the appropriate regulation of a person described in subsection (c) not later than September 1, 2008. The joint guidelines issued under this subsection must include any recommendations for legislation needed to implement the appropriate regulation of a person described in subsection (c), as determined by the commissioner and the director.

(e) This SECTION expires January 1, 2010.

SECTION 59. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "board" refers to the real estate appraiser licensure and certification board created by IC 25-34.1-8-1.

(b) As used in this SECTION, "commission" refers to the Indiana real estate commission created by IC 25-34.1-2-1.

(c) Notwithstanding IC 25-34.1-8-10(e), as added by this act, the commission shall adopt rules to implement IC 25-34.1-8-10, as amended by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Not later than May 1, 2008, the board shall make recommendations to the commission concerning the rules needed to implement IC 25-34.1-8-10, as amended by this act. The commission shall adopt any emergency rules under this SECTION not later than June 1, 2008. An emergency rule adopted under this SECTION:

- (1) takes effect on July 1, 2008; and**
- (2) expires on the earlier of:**
 - (A) the date the rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36; or**

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1 **(B) January 1, 2010.**
2 **(d) This SECTION expires January 1, 2010.**
3 SECTION 60. [EFFECTIVE UPON PASSAGE] (a)
4 **Notwithstanding IC 6-1.1-5.5-5, IC 6-1.1-12-2, and IC 6-1.1-20.9-3,**
5 **all as amended by this act, the department of local government**
6 **finance shall revise the sales disclosure form required under**
7 **IC 6-1.1-5.5-5, as amended by this act, to comply with**
8 **IC 6-1.1-5.5-5, as amended by this act, not later than June 1, 2008.**
9 **(b) This SECTION expires January 1, 2010.**
10 SECTION 61. An emergency is declared for this act.

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