January 16, 2008

SENATE BILL No. 89

DIGEST OF SB 89 (Updated January 15, 2008 12:03 pm - DI 106)

Citations Affected: IC 23-2.

Synopsis: Regulation of loan brokers. 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; and (2) 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. Allows the commissioner to check the qualifications and background of each: (1) equitable owner of a loan brokerage business; and (2) applicant for registration as an originator or a principal manager; by accessing the system. 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

(Continued next page)

Effective: July 1, 2008.

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January 8, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 15, 2008, amended, reported favorably — Do Pass.

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Digest Continued

certain actions to render the personal information illegible or unusable. Prohibits a person from doing any of the following in connection with a contract for the services of a loan broker: (1) Receiving funds that the person knows were generated as a result of a fraudulent act. (2) Filing or causing to be filed with a county recorder any document that contains a misstatement or untrue statement or that omits a material fact. (3) Knowingly releasing or disclosing, or engaging in any reckless or negligent activity allowing the release or disclosure of, the personal information of a borrower or prospective borrower. Makes technical changes. (The introduced version of this bill was prepared by the interim study committee on mortgage practices and home loan foreclosures.)

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January 16, 2008

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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SENATE BILL No. 89

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

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

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

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

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

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

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

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

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

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

(e) As used in this chapter, "loan broker" means any person who, in

return for any consideration from any source procures, attempts to procure, or assists in procuring, a loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

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

(2) any other financial institution that is:

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

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

(3) any insurance company; or

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

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

(g) As used in this chapter, "origination activities" means communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms.

(h) As used in this chapter, "originator" means a person engaged in origination activities. The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection (e).

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

(j) As used in this chapter, "registrant" means an individual who is registered:

(1) to engage in origination activities under this chapter; or

(2) as a principal manager.

(k) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(l) As used in this chapter, "principal manager" means an individual who:

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(1) has at least three (3) years of experience:
(A) as a loan broker; or
(B) in financial services;
that is acceptable to the commissioner; and
(2) is principally responsible for the supervision and management of the employees and business affairs of a licensee.

(m) As used in this chapter, "personal information" includes any of the following:
(1) An individual's first and last names or first initial and last name.
(2) Any of the following data elements:
(A) A Social Security number.
(B) A driver's license number.
(C) A state identification card number.
(D) A credit card number.
(E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.
(3) With respect to an individual, any of the following:
(A) Address.
(B) Telephone number.
(C) Information concerning the individual's:
(i) income or other compensation;
(ii) credit history;
(iii) credit score;
(iv) assets;
(v) liabilities; or
(vi) employment history.

(n) As used in this chapter, personal information is "encrypted" if the personal information:
(1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key; or
(2) is secured by another method that renders the personal information unreadable or unusable.

(o) As used in this chapter, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:
(1) a Social Security number;
(2) a driver's license number;
(3) a state identification number; or

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(4) an account number;

are accessible as part of the personal information.

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

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

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

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

(1) The time of application for an initial:

(A) license; or

(B) certificate of registration.

(2) The time of renewal of a license or certificate of registration. However, if the commissioner seeks evidence of compliance through a criminal background check described in subsection (e), the commissioner 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 commissioner.

(e) For purposes of subsection (d), evidence of compliance with

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this section may include a criminal background check, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.

SECTION 3. IC 23-2-5-5, AS AMENDED BY P.L.230-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) An application for license or renewal of a license must contain:

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

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

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

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

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

(6) the name and registration number for each originator to be employed by the licensee;

(7) the name and registration number for each principal manager; and

(8) for each ultimate equitable owner, the following information:

(1) The name of the ultimate equitable owner.

(2) The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.

(3) The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.

(4) The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for registration as an originator shall be made on a registration form prescribed by the commissioner. The application must include the following information for the individual that seeks to be registered as an originator:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

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(5) The name of the:
(A) licensee; or
(B) applicant for licensure;
for whom the individual seeks to be employed as an originator.
(6) Consent to service of process under subsection (h).
(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
(8) An application fee of one hundred dollars ($100).
(9) All registration numbers previously issued to the individual under this chapter, if applicable.

(c) An application for registration as a principal manager shall be made on a registration form prescribed by the commissioner. The application must include the following information for the individual who seeks to be registered as a principal manager:
(1) The name of the individual.
(2) The home address of the individual.
(3) The home telephone number of the individual.
(4) The individual's Social Security number and date of birth.
(5) The name of the:
(A) licensee; or
(B) applicant for licensure;
for whom the individual seeks to be employed as a principal manager.
(6) Consent to service of process under subsection (h).
(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
(8) Evidence that the individual has at least three (3) years of experience in the:
(A) loan brokerage; or
(B) financial services;
business.
(9) An application fee of two hundred dollars ($200).
(10) All registration numbers previously issued to the individual, if applicable.

(d) The commissioner shall require an applicant for registration as:
(1) an originator under subsection (b); or
(2) a principal manager under subsection (c);
to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner.

(e) A licensee must maintain a bond satisfactory to the commissioner in the amount of fifty thousand dollars ($50,000), which shall be in favor of the state and shall secure payment of damages to

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any person aggrieved by any violation of this chapter by the licensee.

(f) The commissioner shall issue a license and license number to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration and registration number authorizing the registrant to:

(1) engage in origination activities; or

(2) act as a principal manager;

whichever applies.

(g) Licenses and initial certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance.

(h) Every applicant for licensure or registration or for renewal of a license or a registration shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

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

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

(k) The commissioner shall require each:

(1) equitable owner; and

(2) applicant for registration as:

(A) an originator; or

(B) a principal manager;

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

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

(1) equitable owner; and

(2) applicant for registration as:

(A) an originator; or

(B) a principal manager;

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

SECTION 4. IC 23-2-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. A licensee may not continue engaging in the loan brokerage business unless the licensee's license is renewed biennially. A registrant may not continue:

(1) engaging in origination activities; **or**

(2) acting as a principal manager;

unless the registrant's certificate of registration is renewed biennially. A licensee shall renew its license ~~and the certificates of registration of its registrant employees~~ by filing with the commissioner, at least thirty (30) days before the expiration of the ~~registration,~~ **license,** an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application. **A registrant may renew the registrant's certificate of registration by filing with the commissioner, at least thirty (30) days before the expiration of the registration, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.**

SECTION 5. IC 23-2-5-10, AS AMENDED BY P.L.230-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist

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orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

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

(1) that the order or notice has been issued;

(2) of the reasons the order or notice has been issued; and

(3) that upon the receipt of a written request the matter will be set down for a hearing to commence within fifteen (15) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

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

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

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

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

(i) a court with jurisdiction; or

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

in Indiana or in any other jurisdiction; and

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

(3) has:

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

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(B) had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended;

by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization;

(4) is insolvent;

(5) has violated any provision of this chapter;

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

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

(B) fails to state a material fact; or

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

(7) has:

(A) been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime involving fraud or deceit; or

(B) had a felony conviction (as defined in IC 35-50-2-1(b)) within five (5) years before the date of the application, renewal, or review;

(8) if the person is a licensee or principal manager, has failed to reasonably supervise the person's originators or employees to ensure their compliance with this chapter;

(9) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue; or

(10) has engaged in dishonest or unethical practices in the loan broker business, as determined by the commissioner.

(d) The commissioner may do either of the following:

(1) Censure:

(A) a licensee;

(B) an officer, a director, or an ultimate equitable owner of a licensee;

(C) a registrant; or

(D) any other person;

who violates or causes a violation of this chapter.

(2) Permanently bar any person described in subdivision (1) from being:

(A) licensed or registered under this chapter; or

(B) employed by or affiliated with a person licensed or registered under this chapter;

if the person violates or causes a violation of this chapter.

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(e) The commissioner may not enter a final order:

(1) denying, suspending, or revoking the license of a licensee or the registration of a registrant; or

(2) imposing other sanctions;

without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license or certificate of registration pending final determination of any proceeding under this section or before any proceeding is initiated under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that the summary order has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence within fifteen (15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

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

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

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

(1) voluntarily by the registrant; or

(2) by the licensee employing the registrant;

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

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

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business

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days after the person discovers or should have discovered the change; or

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

SECTION 6. IC 23-2-5-11, AS AMENDED BY P.L.48-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) The commissioner may do the following:

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

(2) Make investigations and examinations:

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

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

(3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated this chapter.

(4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under subdivision (2). The commissioner may also bring an action on behalf of the state to enjoin a person from violating this chapter. The commissioner shall notify the person that an order or notice has been issued, the reasons for it, and that a hearing will be set within fifteen (15) days after the commissioner receives a written request from the person requesting a hearing.

(5) Sign all orders, official certifications, documents, or papers issued under this chapter or delegate the authority to sign any of those items to a deputy.

(6) Hold and conduct hearings.

(7) Hear evidence.

(8) Conduct inquiries with or without hearings.

(9) Receive reports of investigators or other officers or employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

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(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

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

(A) processing applications for:

(i) licenses and certificates of registration under this chapter; and

(ii) renewals of licenses and certificates of registration under this chapter; and

(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing and registration system.

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

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item,

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

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

(2) the witness must answer the questions asked and produce the items requested.

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

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

(d) If:

(1) a person disobeys any lawful:

(A) subpoena issued under this chapter; or

(B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) a witness refuses to:

(A) appear when subpoenaed;

(B) testify to any matter about which the witness may be lawfully interrogated; or

(C) take or subscribe to any oath required by this chapter;

the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the

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commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

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

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

(1) The commissioner may not require any person exempt from licensure or registration under this chapter, or any employee or agent of an exempt person, to:

(A) submit information to; or

(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 7. 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.

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

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

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

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

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

(d) A person who is:

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

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

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

SECTION 8. IC 23-2-5-19, AS AMENDED BY P.L.230-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

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

(2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under

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IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).

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

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

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

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

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

(7) The Indiana housing and community development authority.

(8) Subject to subsection (e), and except as provided in subsection (f), any person authorized to:

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

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

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

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

(E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development, if the person closes at least twenty-five (25) such insured loans in Indiana during ~~each~~ **the** calendar year **immediately preceding the year in which the person's notice under subsection (e) is filed.**

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

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

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser

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under IC 25-34.1-8.

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

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

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

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

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

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

(2) include all other information required by the commissioner; and

(3) be accompanied by a fee of four hundred dollars ($400), **plus fifty dollars ($50) for each originator employed by the person to originate loans in Indiana.**

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

(f) An exemption described in subsection (a)(8) does not extend to:

(1) a subsidiary of the exempt person; or

(2) an unaffiliated third party.

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

SECTION 9. IC 23-2-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. **(a) As used in this section, "fully indexed rate" means:**

(1) with respect to a fixed rate loan, the interest rate applicable to the loan at origination; or

(2) with respect to an adjustable rate loan, the maximum interest rate that could apply to the loan at any time during

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the life of the loan.

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

(1) Employ any device, scheme, or artifice to defraud.

(2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.

(3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.

(5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.

(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.

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

SECTION 10. 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

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

(4) any person who is named as a respondent, from any final order issued by the commissioner under section 10 or 11 of this chapter;

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

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

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

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

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

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

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter. The commissioner is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days from the date the order is affirmed from filing a new application if the application is

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not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 89, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 19, delete lines 32 through 42.

and when so amended that said bill do pass.

(Reference is to SB 89 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 0.

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