January 25, 2008

# SENATE BILL No. 352

DIGEST OF SB 352 (Updated January 24, 2008 10:35 am - DI 110)

**Citations Affected:** IC 4-22; IC 24-4.5; IC 24-7; IC 28-1; IC 28-2; IC 28-5; IC 28-6.2; IC 28-7; IC 28-8; IC 28-10; IC 28-11; IC 28-13.

**Synopsis:** Various financial institutions matters. Makes various changes to the laws concerning: (1) financial institutions; and (2) persons licensed under the Uniform Consumer Credit Code. Repeals certain provisions concerning the regulation of money transmitters.

**Effective:** July 1, 2008.

## Paul

January 14, 2008, read first time and referred to Committee on Insurance and Financial Institutions.
January 24, 2008, amended, reported favorably — Do Pass.

C o p y

January 25, 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.

C o p y

# SENATE BILL No. 352

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

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

SECTION 1. IC 4-22-2-37.1, AS AMENDED BY P.L.218-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 37.1. (a) This section applies to a rulemaking action resulting in any of the following rules:

(1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107

and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(9) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(10) An emergency rule adopted by the Indiana finance authority under IC 8-21-12.

(11) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(12) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(13) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(14) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(15) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(16) An emergency rule adopted by the Indiana gaming commission under IC 4-32.2-3-3(b), IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(17) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(18) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(19) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(20) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(21) An emergency rule adopted by the office of Medicaid policy

C o p y

and planning under IC 12-15-41-15 or IC 12-15-44-19(b).

(22) An emergency rule adopted by the Indiana state board of animal health under IC 15-2.1-18-21.

(23) An emergency rule adopted by the board of directors of the Indiana education savings authority under IC 21-9-4-7.

(24) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34 (repealed).

(25) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33 (repealed).

(26) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).

(27) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) (repealed) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) (repealed) or IC 6-1.1-22.5-20.

(28) An emergency rule adopted by the board of the Indiana economic development corporation under IC 5-28-5-8.

(29) A rule adopted by the department of financial institutions under IC 34-55-10-2.5.

(30) A rule adopted by the Indiana finance authority:

(A) under IC 8-15.5-7 approving user fees (as defined in IC 8-15.5-2-10) provided for in a public-private agreement under IC 8-15.5;

(B) under IC 8-15-2-17.2(a)(10):

(i) establishing enforcement procedures; and

(ii) making assessments for failure to pay required tolls;

(C) under IC 8-15-2-14(a)(3) authorizing the use of and establishing procedures for the implementation of the collection of user fees by electronic or other nonmanual means; or

(D) to make other changes to existing rules related to a toll road project to accommodate the provisions of a public-private agreement under IC 8-15.5.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted

C o p y

under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the publisher for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the publisher shall:

(1) accept the rule for filing; and

(2) electronically record the date and time that the rule is accepted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsections (j), (k), and (l), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(13), (a)(24), (a)(25), or (a)(27), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. The extension period for a rule adopted under subsection (a)(28) may not exceed the period for which the original rule was in effect. A rule adopted under subsection (a)(13) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(24), (a)(25), or (a)(27) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(13), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection ~~(a)(6),~~ (a)(8), (a)(12), or (a)(29) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule

C o p y

adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

(j) A rule described in subsection (a)(24) or (a)(25) expires not later than January 1, 2006.

(k) A rule described in subsection (a)(28) expires on the expiration date stated by the board of the Indiana economic development corporation in the rule.

(l) A rule described in subsection (a)(30) expires on the expiration date stated by the Indiana finance authority in the rule.

**(m) A rule described in subsection (a)(5) or (a)(6) expires on the date the department is next required to issue a rule under the statute authorizing or requiring the rule.**

SECTION 2. IC 24-4.5-1-102, AS AMENDED BY P.L.217-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 102. Purposes; Rules of Construction—(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

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

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

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

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

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

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

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

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

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

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2006.~~ **2007.**

**(5) This article applies to a transaction if the director**

C o p y

**determines that the transaction:**

**(a) is in substance a disguised consumer credit transaction; or**

**(b) involves the application of subterfuge for the purpose of avoiding this article.**

**A determination by the director under this paragraph must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this paragraph.**

SECTION 3. IC 24-4.5-1-201, AS AMENDED BY P.L.217-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 201. (1) Except as otherwise provided in this section, this article applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this state, of sales, leases, and loans, wherever made. For purposes of this article, the following apply:

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

(b) A lease or modification of a lease agreement is made in this state if the lessee's agreement or offer to lease or to modify is received by the lessor or a person acting on behalf of the lessor in this state.

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

(d) **Except as provided in subdivision (e),** a sale, lease, or loan transaction occurs in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction with a creditor **or a person acting on behalf of the creditor** in another state and the creditor **or the person acting on behalf of the creditor** has advertised or solicited sales, leases, or loans in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means. However, during the period beginning July 1, 2007, and ending June 30, 2009, this subdivision does not apply to an affiliate or a subsidiary of a financial corporation issued a certificate of authority to operate as an industrial loan and investment company under IC 28-5 if all of the following apply:

(i) The industrial loan and investment company notifies the department in writing that an affiliate or a subsidiary of the industrial loan and investment company engages or plans to

C o p y

engage in activity involving Indiana residents at an out of state location. The notification required by this clause must list all states other than Indiana in which consumer loans may be made and must describe the nature of the proposed transactions.

(ii) The industrial loan and investment company provides written consent allowing the department to consult with and review information provided by other state regulators, as may be requested by the department, concerning the activities identified in clause (i) of any affiliate or subsidiary engaging in consumer lending to Indiana residents in the states identified under clause (i).

(iii) The industrial loan and investment company provides written consent allowing the department to inspect or examine all out of state locations in which an affiliate or a subsidiary of the industrial loan and investment company engages in the activities identified under clause (i) for the purpose of investigating the affiliate's or subsidiary's consumer lending practices involving Indiana residents. An inspection or examination performed by the department under this clause is subject to the schedule of fees established by the department under IC 28-11-3-5.

**(e) A sale, lease, or loan transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction secured by an interest in land located outside Indiana.**

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

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

(3) Except as provided in subsection (2), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was

C o p y

made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

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

(5) Notwithstanding other provisions of this section:

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

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

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

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

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

(c) that fixes venue.

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

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

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

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

SECTION 4. IC 24-4.5-1-301, AS AMENDED BY P.L.57-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 301. General Definitions – In addition to definitions appearing in subsequent chapters in this article:

(1) "Agreement" means the bargain of the parties in fact as found in

C o p y

their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

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

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

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

(a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;

(b) fees for preparation of a deed, settlement statement, or other documents;

(c) escrows for future payments of taxes and insurance;

(d) fees for notarizing deeds and other documents;

(e) appraisal fees; and

(f) credit reports.

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

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

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

(8) "Creditor" means a person:

(a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable in installments; and

(b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

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

C o p y

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

(a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;

(b) by the lender's payment or agreement to pay the debtor's obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(11) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(12) "Organization" means a corporation, a government or governmental subdivision, or an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, ~~or~~ an association, **a joint venture, an unincorporated organization, or any other entity, however organized.**

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

(14) "Person" includes ~~a natural person or~~ an individual, ~~and~~ **or** an organization.

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

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the individual's spouse; and

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

C o p y

(b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

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

(17) "Mortgage transaction" means a transaction in which a first mortgage or a land contract which constitutes a first lien is created or retained against land.

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

(a) twenty-five (25) times; or

(b) five (5) times for transactions secured by a dwelling;

in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

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

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

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and

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

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

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

C o p y

(a) controls;
(b) is controlled by; or
(c) is under common control with;
the person subject to this article.

SECTION 5. IC 24-4.5-3-105 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 105. Unless the loan is made subject to IC 24-4.5-3 by agreement (IC 24-4.5-3-601), and except with respect to disclosure (IC 24-4.5-3-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-3-209), and powers and functions of the department ~~(IC 24-4.5-6-101),~~ **(IC 24-4.5-6-104),** "consumer loan" does not include a loan primarily secured by an interest in land which is a mortgage transaction, (as defined in IC 24-4.5-1-301(17)).

SECTION 6. IC 24-4.5-3-402, AS AMENDED BY P.L.217-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 402. (1) **This section does not apply to a first lien mortgage transaction.**

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

~~(2)~~ **(3)** For the purposes of this section, "terms of the refinancing" means:

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

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

~~(3)~~ **(4)** If a consumer loan is made under the authority of the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3802 et seq.), the note evidencing the mortgage must contain a reference to the

C o p y

applicable federal law.

SECTION 7. IC 24-4.5-3-503, AS AMENDED BY P.L.217-2007, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 503. License to Make Consumer Loans—(1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions.

(2) A license shall not be issued unless the department finds that the financial responsibility, character, and fitness of:

**(a)** the applicant and **any significant affiliate of the applicant;**

**(b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and**

**(c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;**

~~of the members of the applicant (if the applicant is a copartnership or an association) and of the officers and directors of the applicant (if the applicant is a corporation)~~ are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

**(3)** The director is entitled to request evidence of compliance with this section at:

(a) the time of application;

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

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

~~(3)~~ **(4)** Evidence of compliance with this section may include:

(a) criminal background checks, including a national criminal history **background** check **(as defined in IC 10-13-3-12)** by the Federal Bureau of Investigation, **for any individual described in subsection (2);**

(b) credit histories; and

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

**If the director requests a national criminal history background check under subdivision (a) for an individual described in subsection (2), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (3). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal**

C o p y

**history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

~~(4)~~ **(5)** The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

~~(5)~~ **(6)** Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

~~(6)~~ **(7)** The applicant shall pay the following fees at the time designated by the department:

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

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

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

~~(7)~~ **(8)** A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee under subsection ~~(6)(c)~~ **(7)(c)** is delinquent.

~~(8)~~ **(9)** The applicant may deduct the fees required under subsection ~~(6)(a)~~ **(7)(a)** through ~~(6)(c)~~ **(7)(c)** from the filing fees paid under IC 24-4.5-6-203.

~~(9)~~ **(10)** A loan license issued under this section is not assignable or transferable.

~~(10)~~ **(11)** Subject to subsection ~~(11),~~ **(12),** the director may designate an automated central licensing system and repository, operated by a third party, to serve as the sole entity responsible for:

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

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

~~(11)~~ **(12)** The director's authority to designate an automated central licensing system and repository under subsection ~~(10)~~ **(11)** is subject to the following:

(a) The director or the director's designee may not require any person exempt from licensure under this article, or any employee or agent of an exempt person, to:

(i) submit information to; or

C o p y

(ii) participate in;

the automated central licensing system and repository.

(b) Information stored in the automated central licensing system and repository is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the automated central licensing system and repository, unless the person is authorized to do so by statute; ~~or~~

(ii) initiate any civil action based on information obtained from the automated central licensing system if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the automated central licensing system if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the automated central licensing system and repository that are **confidential under IC 28-1-2-30 and that are:**

**(i)** furnished by the director, the director's designee, or a licensee; or ~~that are~~

**(ii)** otherwise obtained by the automated central licensing system and repository;

are confidential and privileged by law and are not ~~(i)~~ subject to inspection under IC 5-14-3, ~~(ii)~~ subject to subpoena, ~~(iii)~~ subject to discovery, or ~~(iv)~~ admissible in evidence in any civil action. However, the director or the director's designee may use the documents, materials, or other information available to the director or the director's designee in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director or the director's designee; or

(ii) by the director or the director's designee;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.

(f) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding;

C o p y

or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

SECTION 8. IC 24-4.5-3-504, AS AMENDED BY P.L.217-2007, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 504. Revocation or Suspension of License—(1) The department may issue to a person licensed to make consumer loans an order to show cause why the license should not be revoked or suspended for a period determined by the department. The order shall state the place and time for a meeting with the department that is no less than ten (10) days from the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

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

**(b) the licensee has repeatedly and willfully violated federal consumer credit laws; or**

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

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

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

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

C o p y

the order and the findings supporting the order.

(5) Any person holding a license to make consumer loans may relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect the person's liability for acts previously committed.

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

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

(8) If the director:

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

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

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

SECTION 9. IC 24-4.5-3-505, AS AMENDED BY P.L.217-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 505. Records; Annual Reports—(1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the department to determine whether the licensee is complying with the provisions of this article. The record keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever located. The records pertaining to any loan shall be retained for two (2) years after making the final entry relating to the loan, but in the case of a revolving loan account the two (2) years is measured from the date of each entry. **A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained by the person.**

(2) Every licensee shall file with the department a composite report as required by the department, but not more frequently than annually, in the form prescribed by the department relating to all consumer loans made by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states.

C o p y

Information contained in the reports shall be confidential and may be published only in composite form. The department may impose a fee in an amount fixed by the department under IC 28-11-3-5 for each day that a licensee fails to file the report required by this subsection.

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

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

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

(c) files for bankruptcy or reorganization; or

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

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

(4) Every licensee shall file notification with the department if ~~a key officer or director of the licensee:~~ **an individual described in section 503(2)(b) or 503(2)(c) of this chapter:**

(a) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or

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

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

SECTION 10. IC 24-4.5-4-108, AS AMENDED BY P.L.217-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 108. Refund or Credit Required; Amount — (1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or the debtor's estate is entitled to a refund of:

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

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

(i) assessed in accordance with ~~IC 24-4.5-2-202~~ **IC 24-4.5-2-202(1)(c)** or ~~IC 24-4.5-3-202~~ **IC 24-4.5-3-202(1)(e);** and

(ii) subject to rebate upon prepayment.

(2) This chapter does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under



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this chapter amount to less than one dollar ($1), and except as provided in subsection (1) does not require the creditor to account to the debtor for any portion of a separate charge for insurance because:

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

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

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

(3) Except as provided in subsection (2), the creditor or the creditor's assignee shall promptly make an appropriate refund or credit to the debtor for any separate charge made for insurance **or for an additional charge described in subsection (1)(b)** if:

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

(b) the insurance **or the protection provided in exchange for the additional charge described in subsection (1)(b)** terminates prior to the end of the scheduled term of the ~~insurance~~ **coverage** because of prepayment in full or otherwise.

**(4) An initial creditor, a subsequent creditor, or an assignee of an initial or a subsequent creditor, shall maintain documentation of any account that is subject to a refund or credit under this section. The information maintained under this subsection shall be made available to the department as necessary to determine compliance with this section.**

~~(4)~~ **(5)** A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the insurance commissioner or a formula filed by the insurer with the insurance commissioner at least thirty (30) days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is used after the insurance commissioner notifies the insurer that it is disapproved.

~~(5)~~ **(6)** If a refund or credit required by subsection (1) **or (3)** is not made to the debtor within sixty (60) days after the date the debt is terminated, due to prepayment in full or otherwise, the creditor shall pay to the debtor for each day after the sixty (60) day period has expired an amount equal to the daily interest at the contracted annual percentage rate on the amount of the refund required by subsection (1) due at the time of prepayment or termination. The director may impose an additional civil penalty of not greater than one thousand dollars

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($1,000) per occurrence if a creditor engages in a pattern or practice of failing to comply with ~~the~~ **this** subsection.

SECTION 11. IC 24-4.5-6-203, AS AMENDED BY P.L.217-2007, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 203. (1) Persons required to file notification who are sellers, lessors, or lenders shall pay a fee in an amount and at intervals to be prescribed by the director under IC 28-11-3-5. The fee shall be a uniform amount for each one hundred thousand dollars ($100,000), or part thereof, in excess of one hundred thousand dollars ($100,000), of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in Indiana and held either by the seller, lessor, or lender for more than thirty (30) days after the inception of the sale, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an increase in the amount of an obligation is a new sale, lease, or loan to the extent of the increase. In prescribing the fee, the department shall consider the costs and expense incurred or estimated to be incurred by the department in the administration of this article, including, but not limited to, the supervision, regulation, and examination of persons subject to the provisions of the article.

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

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

(4) Persons required to renew a license under IC 24-4.5-3-503 may deduct the fees paid under ~~IC 24-4.5-3-503(6)(a)~~ **IC 24-4.5-3-503(7)(a)** through ~~IC 24-4.5-3-503(6)(c)~~ **IC 24-4.5-3-503(7)(c)** from fees paid under this section.

(5) A person that is required to file notification under IC 24-4.5-6-202 shall pay a fee at the same rate as prescribed and fixed by the department under subsection (1) on the original unpaid balances of all closed end credit obligations originating from the person's place

C o p y

of business during the time preceding the notification as specified under subsection (1), unless the fees for the obligations have been paid by another person.

SECTION 12. IC 24-4.5-7-202, AS AMENDED BY P.L.217-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 202. (1) Notwithstanding any other law, the only fee that may be contracted for and received by the lender **or an assignee** on a small loan is a charge, not to exceed twenty-five dollars ($25), for each:

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

(i) dishonored check;

(ii) negotiable order of withdrawal; or

(iii) share draft;

issued by the borrower; or

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

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

(2) A lender may:

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

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

not more than three (3) times.

SECTION 13. IC 24-4.5-7-404, AS AMENDED BY P.L.217-2007, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 404. (1) As used in this section, "commercially reasonable method of verification" means ~~one (1) or more~~ **a** private consumer credit reporting ~~services~~ **service** that the department determines to be capable of providing a lender with adequate verification information necessary to ensure compliance with subsection (4).

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

(3) A lender shall not make a small loan that, when combined with the outstanding balance on another outstanding small loan owed to another lender, exceeds a total of five hundred fifty dollars ($550), excluding finance charges. A lender shall not make a small loan to a borrower who has two (2) or more small loans outstanding, regardless of the total value of the small loans. The amount of five hundred fifty dollars ($550) in this subsection is subject to change under the

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provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.

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

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

(b) **an** available third party ~~databases~~ **database** provided by **a** private consumer reporting ~~services.~~ **service.**

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

(a) provide reasonable notice to all lenders identifying the commercially reasonable ~~methods~~ **method** of verification that ~~are~~ **is** available; and

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

(6) If a borrower presents evidence to a lender that a loan has been discharged in bankruptcy, the lender shall cause the record of the borrower's loan to be updated in the database described in subsection (4)(b) to reflect the bankruptcy discharge.

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

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

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

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

C o p y

record of the loan in the database.

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

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

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

(a) this section; or

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

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

SECTION 14. IC 24-4.5-7-406, AS AMENDED BY P.L.57-2006, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 406. ~~(a)~~ **(1)** An agreement with respect to a small loan may not provide for charges as a result of default by the borrower other than those specifically authorized by this chapter. A provision in a small loan agreement in violation of this section is unenforceable.

~~(b)~~ **(2)** A lender **or an assignee of a small loan** may seek only the following remedies upon default by a borrower:

~~(1)~~ **(a)** Recovery of:

~~(A)~~ **(i)** the contracted principal amount of the loan; and

~~(B)~~ **(ii)** the loan finance charge.

~~(2)~~ **(b)** Collection of a fee for:

~~(A)~~ **(i)** a returned check, negotiable order of withdrawal, or share draft; or

~~(B)~~ **(ii)** a dishonored authorization to debit the borrower's account;

if contracted for under section 202 of this chapter.

~~(3)~~ **(c)** Collection of postjudgment interest, if awarded by a court.

~~(4)~~ **(d)** Collection of court costs, if awarded by a court.

~~(c)~~ **(3)** A lender **or an assignee of a small loan** may not seek any of the following damages or remedies upon default by a borrower:

~~(1)~~ **(a)** Payment of the lender's attorney's fees.

~~(2)~~ **(b)** Treble damages.

~~(3)~~ **(c)** Prejudgment interest.

C o p y

~~(4)~~ **(d)** Damages allowed for dishonored checks under any statute other than this chapter.

~~(5)~~ **(e)** Any damages or remedies not set forth in subsection ~~(b).~~ **(2).**

~~(d)~~ **(4)** A contractual agreement in a small loan transaction must include a notice of the following in 14 point bold type:

~~(1)~~ **(a)** The remedies available to a lender **or an assignee** under subsection ~~(b).~~ **(2).**

~~(2)~~ **(b)** The remedies and damages that a lender **or an assignee** is prohibited from seeking in a small loan transaction under subsection ~~(c).~~ **(3).**

SECTION 15. IC 24-4.5-7-409, AS AMENDED BY P.L.57-2006, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 409. (1) This section applies to licensees and unlicensed persons.

(2) A person who violates this chapter:

~~(a) is subject to a civil penalty up to two thousand dollars ($2,000) imposed by the department;~~

~~(b)~~ **(a)** is subject to the remedies provided in IC 24-4.5-5-202;

~~(c)~~ **(b)** commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5;

~~(d)~~ **(c)** has no right to collect, receive, or retain any principal, interest, or other charges from a small loan; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation; and

~~(e)~~ **(d)** is liable to the borrower for actual damages, statutory damages of two thousand dollars ($2,000) per violation, costs, and attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation.

**The remedies described in this subsection are in addition to all other remedies set forth in this article.**

(3) The department may sue:

(a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and

(b) for other equitable relief.

(4) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a borrower. A borrower is not required to exhaust any administrative remedies under this section or any other applicable law.

SECTION 16. IC 24-4.5-7-410, AS AMENDED BY P.L.57-2006, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C o p y

JULY 1, 2008]: Sec. 410. A lender making small loans, **or an assignee of a small loan,** shall not commit nor cause to be committed any of the following acts:

(a) Threatening to use or using the criminal process in any state to collect on a small loan.

(b) Threatening to take action against a borrower that is prohibited by this chapter.

(c) Making a misleading or deceptive statement regarding a small loan or a consequence of taking a small loan.

(d) Contracting for or collecting attorney's fees on small loans made under this chapter.

(e) Altering the date or any other information on a check or an authorization to debit the borrower's account held as security.

(f) Using a device or agreement that the department determines would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to:

(i) entering a different type of transaction with the borrower;

(ii) entering into a sales/leaseback arrangement;

(iii) catalog sales;

(iv) entering into transactions in which a customer receives a purported cash rebate that is advanced by someone offering Internet content services, or some other product or service, when the cash rebate does not represent a discount or an adjustment of the purchase price for the product or service; or

(v) entering any other transaction with the borrower that is designed to evade the applicability of this chapter.

(g) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a small loan.

(h) Charging to cash a check representing the proceeds of a small loan.

(i) Except as otherwise provided in this chapter:

(i) accepting the proceeds of a new small loan as payment of an existing small loan provided by the same lender; or

(ii) renewing, refinancing, or consolidating a small loan with the proceeds of another small loan made by the same lender.

(j) Including any of the following provisions in a loan document:

(i) A hold harmless clause.

(ii) A confession of judgment clause.

(iii) A mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the director of the department.

C o p y

(iv) An assignment of or order for payment of wages or other compensation for services.

(v) A provision in which the borrower agrees not to assert a claim or defense arising out of contract.

(vi) A waiver of any provision of this chapter.

(k) Selling insurance of any kind in connection with the making or collecting of a small loan.

(l) Entering into a renewal with a borrower.

SECTION 17. IC 24-7-1-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 6. This article does not apply to the rental of a musical instrument through an elementary or a secondary school.**

SECTION 18. IC 28-1-2-30.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 30.5. (a) This section applies to the following:**

**(1) Any:**

**(A) financial institution;**

**(B) person required to file notification with the department under IC 24-4.5-6-202;**

**(C) person subject to IC 24-7; or**

**(D) other person subject to regulation by the department under this title.**

**(2) Any person licensed or required to be licensed under IC 24-4.5.**

**(b) As used in this section, "customer", with respect to a person described in subsection (a), means an individual consumer, or the individual's legal representative, who obtains or has obtained from the person a financial:**

**(1) product; or**

**(2) service;**

**that is to be used primarily for personal, family, or household purposes. The term does not include an affiliate of the person.**

**(c) As used in this section, "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.**

C o p y

**(E) A financial account number or debit card number.**

**(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.**

**(d) 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.**

**(e) 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**

**(4) an account number;**

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

**(f) As used in this chapter, "personal records" means any records that:**

**(1) are maintained, whether as a paper record or in an electronic or a computerized form, by a person to whom this section applies; and**

**(2) contain the unencrypted, unredacted personal information of one (1) or more customers or potential customers.**

**(g) A person to whom this section applies shall keep and handle personal records in a manner that:**

**(1) reasonably safeguards the personal records from destruction, theft, or other loss; and**

**(2) protects the personal records from misuse.**

**(h) If a breach of the security of any personal records occurs, the person maintaining the records is subject to the disclosure requirements under IC 24-4.9-3, unless the person is exempt from**

C o p y

**the disclosure requirements under IC 24-4.9-3-4.**

**(i) A person to whom this section applies may not dispose of personal records without first:**

**(1) shredding, incinerating, or mutilating the personal records; or**

**(2) erasing or otherwise rendering illegible or unusable the personal information contained in the records.**

**(j) If a person to whom this section applies ceases doing business, the person shall, as part of the winding up of the business, safeguard any personal records maintained by the person in accordance with this section until such time as the person is entitled or required to destroy the records under:**

**(1) applicable law; or**

**(2) the person's own records maintenance policies.**

SECTION 19. IC 28-1-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) After the resolutions approving a joint agreement of merger have been adopted by the board of directors of each of the corporations, such resolutions and joint agreement shall be submitted for approval by the department. ~~before the joint agreement is submitted to a vote of the shareholders of the corporations.~~ The department may, in its discretion, approve or disapprove the resolution and joint agreement.

(b) In deciding whether to approve or disapprove a resolution and joint agreement under this section, the department shall consider the following factors:

(1) Whether the institutions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.

(3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(4) Whether the management or other principals of the institution that will result from the proposed transaction under this chapter are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting institution.

(5) Whether the public convenience and advantage will be served by the resulting institution after the proposed transaction.

(6) Whether the institutions subject to the proposed transaction under this chapter furnish all the information the department requires in reaching the department's decision.

C o p y

SECTION 20. IC 28-1-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. ~~If~~ The agreement of merger ~~is approved by the department, it~~ shall be submitted to a vote of the shareholders of each corporation, at the meeting directed by the resolution of the board of directors of each corporation, and the agreement shall be adopted by each corporation upon receiving the affirmative votes of the holders of a majority of the outstanding shares of the capital stock of the corporation. A mutual savings association or mutual savings bank shall adopt the agreement upon receiving the affirmative vote of fifty-one percent (51%) or more of the votes cast at the meeting called to consider such agreement of merger.

SECTION 21. IC 28-1-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) After the resolution approving a joint agreement of consolidation has been adopted by the board of directors of each of the corporations, the resolutions and joint agreement shall be submitted to the department. ~~for approval before the joint agreement is submitted to a vote of the shareholders of the corporations.~~ The department may, in its discretion, approve or disapprove the resolutions and joint agreement.

(b) In deciding whether to approve or disapprove a transaction under this chapter, the department shall consider the following factors:

(1) Whether the institutions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.

(3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(4) Whether the management or other principals of the institution that will result from the proposed transaction under this chapter are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting institution.

(5) Whether the public convenience and advantage will be served by the resulting institution after the proposed transaction.

(6) Whether the institutions subject to the proposed transaction under this chapter furnish all the information the department requires in reaching the department's decision.

SECTION 22. IC 28-1-7-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. ~~If~~ The agreement of consolidation ~~is approved by the department, it~~ shall be submitted to a vote of the shareholders of each corporation and shall be adopted

C o p y

upon receiving the same affirmative votes, and the adoption shall be followed by the same notice to shareholders as is prescribed in sections 3, 5, and 6 of this chapter, as if the consolidation were a merger.

SECTION 23. IC 28-1-13-1.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.2. As used in this chapter, "loans and extensions of credit" ~~includes all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person. To the extent specified by the department, the term includes any liability of a bank to advance funds to or on behalf of a person under a contractual commitment.~~ **has the meaning set forth in 12 CFR 32.2.**

SECTION 24. IC 28-1-20-4, AS AMENDED BY P.L.57-2006, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) Except as provided in subsections (c), (d), (g), ~~and (k),~~ **and (o),** it is unlawful for any person, firm, limited liability company, or corporation (other than a bank or trust company, a bank holding company, a subsidiary of a bank or trust company, a subsidiary of a bank holding company, a subsidiary of a savings bank, **or** a subsidiary of a savings association ~~or a corporate fiduciary~~ organized or reorganized under IC 28 or statutes in effect at the time of organization or reorganization or under the laws of the United States):

(1) to use the word "bank", "banc", or "banco" as a part of the name or title of the person, firm, **limited liability company,** or corporation; or

(2) to advertise or represent the person, firm, limited liability company, or corporation to the public:

(A) as a bank or trust company or a corporate fiduciary; or

(B) as affording the services or performing the duties which by law only a bank or trust company or a corporate fiduciary is entitled to afford and perform.

(b) A financial institution organized under the laws of any state or the United States is authorized to do business in Indiana:

(1) at its principal office;

(2) at any branch office; or

(3) otherwise;

using a name other than its official entity name if the financial institution notifies the department at least ten (10) days before using the other name.

(c) Notwithstanding the prohibitions of this section, an out-of-state financial institution with the word "bank" in its legal name may use the word "bank" if the financial institution is insured by the Federal

C o p y

Deposit Insurance Corporation or its successor.

(d) Notwithstanding subsection (a), a building and loan association organized under IC 28-4 (before its repeal) may include in its name or title:

(1) the words "savings bank"; or

(2) the word "bank" if the name or title also includes either the words "savings bank" or letters "SB".

A building and loan association that includes "savings bank" in its title under this section does not by that action become a savings bank for purposes of IC 28-6.1.

(e) The name or title of a savings bank governed by IC 28-6.1 must include the words "savings bank" or the letters "SB".

(f) A savings association may include in its name the words "building and loan association".

(g) Notwithstanding subsection (a), a bank holding company (as defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a part of its name. However, this subsection does not permit a bank holding company to advertise or represent itself to the public as affording the services or performing the duties that by law a bank or trust company only is entitled to afford and perform.

(h) The department is authorized to investigate the business affairs of any person, firm, limited liability company, or corporation that uses "bank", "banc", or "banco" in its title or holds itself out as a bank, corporate fiduciary, or trust company for the purpose of determining whether the person, firm, limited liability company, or corporation is violating any of the provisions of this article, and, for that purpose, the department and its agents shall have access to any and all of the books, records, papers, and effects of the person, firm, limited liability company, or corporation. In making its examination, the department may examine any person and the partners, officers, members, or agents of the firm, limited liability company, or corporation under oath, subpoena witnesses, and require the production of the books, records, papers, and effects considered necessary. On application of the department, the circuit or superior court of the county in which the person, firm, limited liability company, or corporation maintains a place of business shall, by proper proceedings, enforce the attendance and testimony of witnesses and the production and examination of books, papers, records, and effects.

(i) The department is authorized to exercise the powers under IC 28-11-4 against a person, firm, limited liability company, or corporation that improperly holds itself out as a financial institution.

(j) A person, firm, limited liability company, or corporation who

C o p y

violates this section is subject to a penalty of five hundred dollars ($500) per day for each and every day during which the violation continues. The penalty imposed shall be recovered in the name of the state on relation of the department and, when recovered, shall be paid into the financial institutions fund established by IC 28-11-2-9.

(k) The word "bank", "banc", or "banco" may not be included in the name of a corporate fiduciary.

(l) A person, firm, limited liability company, or corporation may not use the name of an existing ~~bank or bank holding company~~ **depository financial institution or holding company of a depository financial institution, or** a name confusingly similar to that of an existing ~~bank or bank holding company~~ **depository financial institution or holding company of a depository financial institution,** when marketing to or soliciting business from a customer or prospective customer if the reference to the existing ~~bank or bank holding company~~ **depository financial institution or holding company of a depository financial institution** is:

(1) without the consent of the existing ~~bank or bank holding company;~~ **depository financial institution or holding company of a depository financial institution;** and

(2) in a manner that could cause a reasonable person to believe that the marketing material or solicitation:

(A) originated from;

(B) is endorsed by; or

(C) is in any other way the responsibility of;

the existing ~~bank or bank holding company~~ **depository financial institution or holding company of a depository financial institution.**

(m) An existing ~~bank or bank holding company~~ **depository financial institution or holding company of a depository financial institution** may, in addition to any other remedies available under the law, report an alleged violation of subsection (l) to the department. If the department finds that the marketing material or solicitation in question is in violation of subsection (l), the department may direct the person, firm, limited liability company, or corporation to cease and desist from using that marketing material or solicitation in Indiana. If that person, firm, limited liability company, or corporation persists in using the marketing material or solicitation, the department may impose a civil penalty of up to fifteen thousand dollars ($15,000) for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer constitutes a separate violation of subsection (l).

(n) Nothing in subsection (l) or (m) prohibits the use of or reference

C o p y

to the name of an existing ~~bank or bank holding company~~ **depository financial institution or holding company of a depository financial institution** in marketing materials or solicitations, if the use or reference does not deceive or confuse a reasonable person regarding whether the marketing material or solicitation:

(1) originated from;

(2) is endorsed by; or

(3) is in any other way the responsibility of;

the existing ~~bank or bank holding company.~~ **depository financial institution or holding company of a depository financial institution.**

**(o) A person, firm, limited liability company, or corporation may use the word "bank", "banc", or "banco" if it would not create a substantial likelihood of misleading the public by implying that the person, firm, limited liability company, or corporation is a state or federally chartered bank or savings bank.**

**(p) As used in this section, "depository financial institution" has the meaning set forth in IC 28-1-1-6.**

~~(o)~~ **(q)** The department may adopt rules under IC 4-22-2 to implement this section.

SECTION 25. IC 28-1-29-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. The following words, when used in this chapter, shall have the meaning ascribed to them unless the context clearly requires a different meaning:

(1) "Person" includes individuals, **sole proprietorships,** partnerships, ~~associations,~~ limited liability ~~company, and~~ **companies, trusts, joint ventures,** corporations, **unincorporated organizations, and other entities, however organized.**

(2) ~~"Budget service company"~~ **"Debt management company"** is any person doing business as a budget counseling, credit counseling, debt management, or debt pooling service or holding ~~himself~~ **the person** out, by words of similar import, as providing services to debtors in the management of their finances and debts, and contracting with the debtor for a fee to receive from the debtor and disburse money or anything of value. ~~"Budget service company"~~ **The term** includes **the following:**

**(A)** An entity that simply holds any check, personal check, money order, personal money order, draft, or any other instrument for the transmission of money.

**(B) A person or an entity known as a "budget service company".**

(3) "License" means a license issued under the provisions of this chapter.

C o p y

(4) "Licensee" means any person to whom a license has been issued pursuant to the provisions of this chapter.

(5) "Contract debtor" means a debtor who has entered into a contract with a licensee.

(6) "Debt" means an obligation arising out of personal, family, or household use.

(7) "Debtor" means an individual whose principal debts and obligations arise out of personal, family, or household use and shall not apply to persons whose principal indebtedness arises out of business purpose transactions.

(8) "Department" means the members of the department of financial institutions.

(9) "Finances" means a savings deposit that is:

(A) made on behalf of a contract debtor;

(B) owned and controlled exclusively by the contract debtor and not a licensee who has a power of attorney of the contract debtor; and

(C) placed in a bank or savings institution chartered by the state or federal government.

SECTION 26. IC 28-1-29-3, AS AMENDED BY P.L.217-2007, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) No person shall operate a ~~budget service~~ **debt management** company in Indiana without having obtained a license from the department. For purposes of this section, a person is operating in Indiana if:

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

(2) the person:

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

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

(i) Mail.

(ii) Personal delivery.

(iii) Telephone.

(iv) Radio.

(v) Television.

(vi) The Internet or other electronic communications.

(vii) Any other means of communication.

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

(1) the time of application;

C o p y

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

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

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

(1) criminal background checks, including a national criminal history **background** check **(as defined in IC 10-13-3-12)** by the Federal Bureau of Investigation **for any individual described in section 5(b)(2) or 5(b)(3) of this chapter;**

(2) credit histories; and

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

**If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (b). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

(d) The fee for a license or renewal shall be fixed by the department under IC 28-11-3-5 and shall be nonrefundable. ~~A licensee failing to renew annually shall be required to pay~~ **The department may impose** a fee ~~fixed by the department~~ under IC 28-11-3-5 for ~~a new application.~~ **each day that a renewal fee due and payable under this subsection is delinquent.**

(e) If a person knowingly acts as a ~~budget service~~ **debt management** company in violation of this chapter, any agreement the person has made under this chapter is void and the debtor under the agreement is not obligated to pay any fees. If the debtor has paid any amounts to the person, the debtor, or the department on behalf of the debtor, may recover the payment from the person that violated this section.

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

SECTION 27. IC 28-1-29-5, AS AMENDED BY P.L.217-2007, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) Every person doing business as a ~~budget service~~ **debt management** company shall make application to the department for a license to engage in such business. Such application

C o p y

shall be in the form prescribed by the department and shall contain such information as the department may require.

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

(1) the applicant **and any significant affiliate of the applicant;** ~~and~~

~~(2) the: (A) members of the applicant, if the applicant is a partnership or association; or (B) officers and directors of the applicant, if the applicant is a corporation;~~

**(2) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and**

**(3) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;**

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

(c) An application submitted under this section must indicate whether ~~(1)~~ any ~~(A) members of the applicant, if the applicant is a partnership or association; or (B) officers and directors of the applicant, if the applicant is a corporation;~~ **individuals described in subsection (b)(2) or (b)(3):**

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

(2) ~~any: (A) members of the applicant, if the applicant is a partnership or association; or (B) officers and directors of the applicant, if the applicant is a corporation;~~ have been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

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

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

SECTION 28. IC 28-1-29-7.5, AS ADDED BY P.L.217-2007, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C o p y

JULY 1, 2008]: Sec. 7.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:

(1) Any ~~(A) members of the licensee, if the licensee is a partnership or association; or (B) officers and directors of the licensee, if the licensee is a corporation;~~ **individuals described in section 5(b)(2) or 5(b)(3) of this chapter** are under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(2) Any ~~(A) members of the licensee, if the licensee is a partnership or association; or (B) officers and directors of the licensee, if the licensee is a corporation;~~ **individuals described in section 5(b)(2) or 5(b)(3) of this chapter** have been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

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

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

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

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

whichever applies; or

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

SECTION 29. IC 28-1-29-8, AS AMENDED BY P.L.217-2007, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A licensee shall deliver to every contract debtor, at the time the contract is made, a copy of the contract, showing the:

(1) date executed;

(2) rate of charge the licensee will impose;

(3) initial set up fee;

(4) cancellation fee;

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

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

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

C o p y

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

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

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

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

(e) A licensee shall maintain in the licensee's business such books, accounts, and records as will enable the department or the attorney general to determine whether such license is complying with this chapter. Such books, accounts, and records shall be preserved for at least three (3) years after making the final entry of any contract recorded therein. **A licensee is subject to IC 28-1-2-30.5 with respect to any records maintained by the licensee.**

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

(g) Upon:

C o p y

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

(2) termination of payments by a contract debtor;

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

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

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

(j) A licensee may provide services under this chapter in the same place of business in which another business is operating, or from which other products or services are sold, if the director issues a written determination that:

(1) the operation of the other business; or

(2) the sale of other products and services;

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

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

(1) solicit sales of; and

(2) sell;

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

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

SECTION 30. IC 28-1-29-10, AS AMENDED BY P.L.57-2006, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. The department may examine all books, records, and accounts of any person doing business as a ~~budget service~~ **debt management** company at least once a year. The cost of such examination will be paid by the company upon a fee basis fixed by the department under IC 28-11-3-5. The record keeping system of a licensee shall be made available in Indiana for examination. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available.

C o p y

For the purpose of discovering violations of this chapter and securing information necessary for the enforcement of this chapter, the department may investigate:

(1) a licensee; or

(2) a person that the department suspects is operating without a valid license or in violation of this chapter.

SECTION 31. IC 28-1-29-12, AS AMENDED BY P.L.217-2007, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. This chapter does not apply to any attorney at law authorized to practice in this state, or to any individual, partnership, association, limited liability company, or corporation doing business or operating in this state as a trust company or building and loan association, licensed lending institution, court appointed receivers, trustees in bankruptcy, or any not-for-profit corporation providing the services of a ~~budget service~~ **debt management** company which does not charge the debtor any fee for such services, other than fees that are:

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

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

SECTION 32. IC 28-2-13-22.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 22.6. (a) As used in this chapter, "school" means:**

**(1) an elementary school (as defined in IC 20-18-2-4); or**

**(2) a secondary school (as defined in IC 20-18-2-18).**

**The term includes a public school (as defined in IC 20-18-2-15) or a nonpublic school (as defined in IC 20-18-2-12).**

**(b) A state bank is entitled to establish an intermittent facility on the premises of a school in Indiana for the purpose of offering limited account services as an educational tool for students.**

**(c) The services that may be offered at an intermittent facility established under this section include:**

**(1) the opening of accounts;**

**(2) the acceptance of deposits; and**

**(3) other services determined by the department.**

**(d) To establish an intermittent facility under this section, a state bank is not required to submit an application to the department. However, before establishing an intermittent facility under this section, a state bank must:**

**(1) obtain the written permission of:**

C o p y

**(A) the governing body of the school corporation, for a public school; or**

**(B) the equivalent authority for a nonpublic school;**

**for the establishment and operation of the facility on the premises of the school; and**

**(2) notify the department in writing of the intention of the state bank to establish the intermittent facility.**

**(e) A written notice provided to the department under subsection (d)(2) must:**

**(1) be in the form; and**

**(2) contain the information;**

**prescribed by the department.**

**(f) An intermittent facility operated by a state bank under this section:**

**(1) may be operated only during the school year; and**

**(2) must meet all other requirements of state law applying to state banks.**

SECTION 33. IC 28-2-14-18, AS AMENDED BY P.L.217-2007, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) As used in this section, "affiliate" includes the following:

(1) A financial institution.

(2) Any company that controls a financial institution and any other company that is controlled by the company that controls a financial institution.

(3) A bank subsidiary of a financial institution.

(4) Any company:

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

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

(5) Any:

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

(B) investment company with respect to which a financial

C o p y

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

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

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

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

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

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

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

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

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

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

(ii) the effective date of the company's action under item (i); whichever is later.

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

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

(1) A bank.

(2) A bank and trust company.

(3) A savings bank.

(4) A trust company.

C o p y

(5) A corporate fiduciary.
(6) An industrial loan and investment company.
(7) A savings association.
(8) A bank of discount and deposit.
(9) A loan and trust and safe deposit company.

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

(1) The authority to act as:

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

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

(C) an agent;

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

(E) an attorney-in-fact.

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

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

(e) The board of directors of any bank holding company or other company that controls a financial institution may adopt a resolution to cause an ~~affiliate it controls~~ **affiliated financial institution** to succeed to part or all of the trust business of another affiliate it controls. If a financial institution is not controlled by another company, the board of directors of the financial institution may adopt a resolution to cause part or all of its trust business to succeed to an ~~affiliate.~~ **affiliated financial institution.** If the board of directors adopts such a resolution and files a certified copy of it as required by subsection (f), the successor affiliate becomes successor fiduciary in place of the predecessor affiliate with all the rights, powers, and duties that were granted to or imposed on the predecessor affiliate. The rights, powers, and duties vest in the successor affiliate, after the taking effect of the succession, irrespective of the date upon which the relation is

C o p y

established, and irrespective of the date of any related written agreement establishing the relationship or of the date of the death of any decedent whose estate is being so administered. Nothing done in connection with the succession effects a renunciation or revocation of any letters of administration or letters testamentary pertaining to the relation, nor does it effect a removal or resignation from the executorship, trusteeship, or other fiduciary relationship.

(f) If a resolution is adopted under this section, the board of directors shall file a certified copy of the resolution with the department. The board of directors may file the copy in person or by certified mail. The effective date of the succession to part or all of the trust business, as set forth in the resolution, is the date provided in the resolution, which must not be before or more than thirty (30) days after the date of filing of the resolution. If the resolution provides no effective date, the effective date is the date of filing.

SECTION 34. IC 28-5-1-4, AS AMENDED BY P.L.141-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) As used in this section:

"Automated teller facility" means electronic or mechanical equipment that performs routine transactions for the public at locations off premises of the principal office or branch office of a company that holds a certificate to engage in business under this chapter and that is authorized to issue, negotiate, and sell certificates of investment or indebtedness.

"Branch" means any office, agency, mobile unit, messenger service, or other place of business at which:

(1) ~~payments into certificates of investment or indebtedness~~ **deposits** are received;

(2) ~~checks,~~ negotiable or transferable instruments or orders, or similar instruments, are paid; or

(3) money is lent.

However, the term does not include the principal office of a company or an automated teller facility.

"Financial institution" has the same meaning as in IC 28-1-1-3.

(b) Any domestic corporation organized under the general corporation laws of Indiana may engage in business as an industrial loan and investment company subject to the limitations and restrictions set forth in this chapter. The department may issue a certificate authorizing a corporation to engage in business under this chapter after the department considers and investigates all the following:

(1) The financial standing and character of the incorporators, organizers, directors, principal shareholders, or controlling

C o p y

corporations.

(2) The character, qualifications, and experience of the officers and directors of the corporation.

(3) The future earnings prospects for the proposed corporation in the community in which the corporation will be located.

(4) The adequacy of the corporation's capital.

If the department determines any of the factors described in subdivisions (1) through (4) unfavorably, the department may not issue a certificate authorizing the corporation to engage in business under this chapter. Certificates issued under this section must state whether the corporation is authorized to ~~issue, negotiate, and sell certificates of investment or indebtedness,~~ **accept deposits** and, if not, must provide that the corporation may do business under this article only as restricted by section 21 of this chapter.

(c) Any company that is authorized to ~~issue, negotiate, and sell certificates of investment or indebtedness~~ **accept deposits** and that holds a certificate to engage in business under this chapter is entitled to establish one (1) or more branches de novo and one (1) or more branches by acquisition in any location or locations within Indiana, at which any business of the company may be transacted to the same extent as at the principal office of the company.

(d) As a condition to the establishment and operation of a branch or branches under this section, the company must:

(1) obtain prior written approval of the department;

(2) operate each branch under the correct name of the company and its name must contain in addition the word "branch"; and

(3) demonstrate that the applicant company will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the branch.

(e) The location of the principal office or any branch established under this section may be changed at any time when authorized by the board of directors of the company and approved by the department.

(f) Any company desiring to open or establish one (1) or more branches or change location of an existing branch or the principal office must file a written application therefor, in such form and containing such information as may be prescribed by the department. If the department determines that the requirements of subsection (d) have been satisfied, the department may in its discretion approve the application.

(g) A company is entitled to open or establish an automated teller facility in any location within Indiana or as permitted by the laws of the state in which the automated teller machine is to be located. An

C o p y

automated teller facility may be owned or operated individually by any company or jointly on a cost sharing or fee basis.

(h) A branch by acquisition may be established under this section only if done in compliance with applicable provisions of IC 28-1-7 or IC 28-1-8.

(i) A company that is authorized to ~~issue, negotiate, and sell certificates of investment or indebtedness~~ **accept deposits** and that holds a certificate to engage in business under this chapter is entitled to establish one (1) or more branches de novo and one (1) or more branches by acquisition in any location outside Indiana. Any business of the company may be transacted at a branch established under this subsection to the same extent as at the principal office of the company, subject to IC 28-2-18-19.

SECTION 35. IC 28-5-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. A company may not engage in the banking or trust business, operate a savings bank, commercial bank or trust company, advertise or hold itself out to the public as a bank, savings bank or trust company, or use the word "bank" in connection with its name or business in any of its advertising or literature. A company may not accept deposits or "savings accounts" or advertise or hold itself out to the public as accepting deposits of money or "savings accounts", unless the company maintains federal deposit insurance, as authorized by section ~~6(a)(17)~~ **6(a)(16)** of this chapter. A company may not advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or calculated to deceive. If any company refers in any advertising matter to the rate of charge upon loans to be made by it, the department may require such company to state such rate of charge fully and clearly in such manner as it may deem necessary to prevent misunderstanding thereof by prospective borrowers. The department may order any company to desist from any conduct which it shall find to be a violation of this section.

SECTION 36. IC 28-6.2-1-10.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 10.1. "Federal mutual holding company" means a mutual savings bank holding company that:**

**(1) is organized or reorganized under the laws of the United States;**

**(2) is regulated by the Office of Thrift Supervision or its**

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**successor; and**

**(3) has control over a savings bank.**

SECTION 37. IC 28-6.2-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.5. A mutual savings bank may, upon application to and with the approval by the department and the Office of Thrift Supervision, reorganize as a federal mutual holding company by undertaking a transaction or series of transactions substantially similar to those set forth in section 1 of this chapter.**

SECTION 38. IC 28-7-1-0.5, AS AMENDED BY P.L.217-2007, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 0.5. The following definitions apply throughout this chapter:

(1) "Automated teller machine" (ATM) means a piece of unmanned electronic or mechanical equipment that performs routine financial transactions for authorized individuals.

(2) "Branch office" means an office, agency, or other place of business at which deposits are received, share drafts are paid, or money is lent to members of a credit union. The term does not include:

(A) the principal office of a credit union;

(B) the principal office of a credit union affiliate;

(C) a branch office of a credit union affiliate;

(D) an automated teller machine; or

(E) a night depository.

(3) "Credit union" is a cooperative, nonprofit association, incorporated under this chapter, for the purposes of educating its members in the concepts of thrift and to encourage savings among its members. A credit union should provide a source of credit at a fair and reasonable rate of interest and provide an opportunity for its members to use and control their own money in order to improve their economic and social condition.

(4) "Department" refers to the department of financial institutions.

(5) "Surplus" means the credit balance of undivided earnings after losses. The term does not include statutory reserves.

(6) "Unimpaired shares" means paid in shares less any losses for which no reserve exists and for which there is no charge against undivided earnings.

(7) "Related credit union service organization" means, in reference to a credit union, a credit union service organization in which the credit union has invested under section 9(3)(J) of this

C o p y

chapter.

(8) "Premises" means any office, branch office, suboffice, service center, parking lot, real estate, or other facility where the credit union transacts or will transact business.

(9) "Furniture, fixtures, and equipment" means office furnishings, office machines, computer hardware, computer software, automated terminals, and heating and cooling equipment.

(10) "Fixed assets" means:

(A) premises; and

(B) furniture, fixtures, and equipment.

(11) "Audit period" means a twelve (12) month period designated by the board of directors of a credit union.

(12) "Community" means:

(A) a second class city;

(B) a third class city;

(C) a town;

(D) a county other than a county containing a consolidated city;

(E) a census tract;

(F) a township; or

(G) any other municipal corporation (as defined in IC 36-1-2-10).

(13) "Control of a related interest" refers to a situation in which an individual directly or indirectly, or through or in concert with one (1) or more other individuals, possesses any of the following:

(A) The ownership of, control of, or power to vote at least twenty-five percent (25%) of any class of voting securities of the related interest.

(B) The control in any manner of the election of a majority of the directors of the related interest.

(C) The power to exercise a controlling influence over the management or policies of the related interest. For purposes of this clause, an individual is presumed to have control, including the power to exercise a controlling influence over the management or policies of a related interest, if the individual:

(i) is an executive officer or a director of the related interest and directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest; or

(ii) directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting

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securities of the related interest and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(14) "Executive officer" includes any of the following officers of a credit union:

(A) The chairman of the board of directors.

(B) The president.

(C) A vice president.

(D) The cashier.

(E) The secretary.

(F) The treasurer.

(15) "Immediate family", for purposes of section 17.1 of this chapter, means the spouse of an individual, the individual's minor children, and any of the individual's children, including adults, residing in the individual's home.

(16) "Officer" means any individual who participates or has the authority to participate in major policymaking functions of a credit union, regardless of whether:

(A) the individual has an official title;

(B) the individual's title designates the individual as an assistant; or

(C) the individual is serving without salary or other compensation.

(17) "Related interest", with respect to an individual, means:

(A) a partnership, a corporation, or another business organization that is controlled by the individual; or

(B) a political campaign committee:

(i) controlled by the individual; or

(ii) the funds or services of which benefit the individual.

(18) Except as provided in section 9(3)(J) of this chapter, ~~"unimpaired~~ "capital and ~~unimpaired~~ surplus" means the sum of:

(A) undivided profits;

(B) reserve for contingencies;

(C) regular reserve; and

(D) allowance for loan and lease losses.

SECTION 39. IC 28-7-1-9, AS AMENDED BY P.L.217-2007, SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to officers, directors, or committee members

C o p y

under section 17.1 of this chapter.

(3) To invest in any of the following:

(A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

(C) Interest-bearing obligations of the FSLIC Resolution Fund and obligations of national mortgage associations issued under the authority of the National Housing Act.

(D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).

(E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(F) In savings and loan associations, other credit unions that are insured under IC 28-7-1-31.5, and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company; nor more than forty percent (40%) in all such associations and companies.

(G) Corporate credit unions.

(H) Federal funds or similar types of daily funds transactions with other financial institutions.

(I) Mutual funds created and controlled by credit unions, credit union associations, or their subsidiaries. Mutual funds referred to in this clause may invest only in instruments that are approved for credit union purchase under this chapter.

(J) Shares, stocks, or obligations of any credit union service organization (as defined in Section 712 of the Rules and Regulations of the National Credit Union Administration) with the approval of the department. Not more than ten percent (10%) of the ~~total paid in and unimpaired~~ capital and **surplus and** unimpaired shares of the credit union may be invested under this clause. However, a credit union may invest more than ten percent (10%) of the ~~total paid in and unimpaired~~

C o p y

capital and **surplus and** unimpaired shares with the prior approval of the department. ~~For purposes of this clause, "unimpaired capital and unimpaired shares" has the meaning set forth in 12 CFR 700.2.~~

(K) For a credit union that is well capitalized (as defined in Section 702 of the Rules and Regulations of the National Credit Union Administration), investment securities, as may be defined by a policy or rule of the department and subject to the following:

(i) The department may prescribe, by policy or rule, limitations or restrictions on a credit union's investment in investment securities.

(ii) The total amount of any investment securities purchased or held by a credit union may never exceed at any given time ten percent (10%) of the ~~unimpaired~~ capital and surplus of the credit union. However, the limitations imposed by this item do not apply to investments in the direct or indirect obligations of the United States or in the direct obligations of a United States territory or insular possession, or in the direct obligations of the state or any municipal corporation or taxing district in Indiana.

(iii) A credit union may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this item, a security is speculative or has speculative characteristics if at the time of purchase the security is in default or is rated below the first four (4) rating classes by a generally recognized security rating service.

(iv) A credit union may purchase for its own account a security that is not rated by a generally recognized security rating service if the credit union at the time of purchase obtains financial information that is adequate to document the investment quality of the security.

(v) A credit union that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

(vi) Except as otherwise authorized by this title, a credit union may not purchase any share of stock of a corporation.

(L) Collateralized obligations that are eligible for purchase and sale by federal credit unions. However, a credit union may

C o p y

purchase for its own account and sell the obligations only to the extent that a federal credit union can purchase and sell those obligations.

(4) To deposit its funds into:

(A) depository institutions that are federally insured; or

(B) state chartered credit unions that are privately insured by an insurer approved by the department.

(5) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.

(6) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.

(7) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.

(8) To charge the member's share account for the actual cost of a necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.

(9) To transfer to an accounts payable account, a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of at least two (2) years. The credit union shall not consider the payment of dividends on the transferred account.

(10) To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its assets is subject to the approval of the department.

(11) To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.

(12) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

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(13) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.

(14) To sell and cash negotiable checks, travelers checks, and money orders for members.

(15) To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of ~~its unimpaired~~ **the purchasing credit union's** capital and surplus unless special written authorization has been granted by the department.

(16) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(17) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a tax advantaged savings plan which qualifies or qualified for specific tax treatment under Section 223, 401(d), 408, 408A, or 530 of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.

(18) To issue shares of its capital stock or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.

(19) A credit union may exercise any rights and privileges that are:

(A) granted to federal credit unions; but

(B) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

if the credit union complies with section 9.2 of this chapter.

(20) To sell, pledge, or discount any of its assets. However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment

C o p y

of money deposited, give security as authorized by federal law.

(21) To purchase assets of another credit union and to assume the liabilities of the selling credit union.

(22) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed twenty percent (20%) of the total assets of that credit union, excluding those public funds.

(23) To join the National Credit Union Administration Central Liquidity Facility.

(24) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(25) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

(26) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

C o p y

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

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

SECTION 40. IC 28-7-1-17.1, AS ADDED BY P.L.141-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17.1. (a) ~~Subject to subsection (b),~~ A credit union may make a loan to the credit union's individual ~~officers,~~ directors and committee members under the following terms and conditions:

(1) The loan must comply with all requirements under this chapter that apply to loans made to other borrowers.

(2) The loan may not be on terms more favorable than those extended to other borrowers.

(3) The borrower may not:

(A) take part in the consideration of; or

(B) vote on;

the borrower's loan application.

(4) Except as provided in subsection (b), a credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the individual's immediate family, or the individual's related interests, exceeds the greater of:

(A) five percent (5%) of the credit union's ~~unimpaired~~ capital and surplus; or

(B) twenty-five thousand dollars ($25,000);

unless the loan is first approved by the credit union's board of directors.

(5) A credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the individual's immediate family, or the individual's related interests, exceeds the lending limits set forth in IC 28-7-1-39.

(6) ~~Subject to subsection (b),~~ The total amount of all loans made under this section may not exceed the credit union's ~~unimpaired~~ capital and surplus. **However, the limit set forth in this**

C o p y

**subdivision does not apply to either of the following:**

**(A) A loan, in any amount, secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.**

**(B) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.**

(b) ~~The limits set forth in subsections~~ **Approval by the board of directors under subsection** (a)(4) ~~and (a)(6) do not apply to any of the following: (1)~~ **is not required for** an extension of credit made under a line of credit approved under subsection (a)(4) if the extension of credit is made not later than fourteen (14) months after the line of credit was approved.

~~(2) A loan, in any amount, to finance the education of an individual's child.~~

~~(3) A loan, in any amount, to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the individual, if:~~

~~(A) the loan is secured by a first lien on the residence and the residence is owned, or will be owned after the loan is made, by the individual; and~~

~~(B) in the case of a refinancing, the loan includes only the amount used to repay the original loan, plus any closing costs and any additional amount used for any purpose described in this subdivision.~~

~~(4) A loan, in any amount, secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.~~

~~(5) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.~~

~~(6) A loan made to an individual, the individual's immediate family, or the individual's related interests, for any other purpose, if the total amount of loans to the individual, the individual's immediate family, or the individual's related interests under this section does not exceed, at any given time, the greater of:~~

~~(A) two and one-half percent (2.5%) of the credit union's unimpaired capital and unimpaired surplus; or~~

~~(B) twenty-five thousand dollars ($25,000);~~

~~but in no event more than one hundred thousand dollars~~

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~~($100,000).~~

~~(c) At least quarterly, the president or manager shall prepare and deliver to the board of directors a report listing the outstanding indebtedness of all officers, directors, and committee members. A report prepared under this subsection must be retained at the credit union for three (3) years and shall not be filed with the department unless specifically requested. A report required by this subsection must include:~~

~~(1) the amount of each indebtedness; and~~

~~(2) a description of the terms and conditions of each loan, including:~~

~~(A) the interest rate;~~

~~(B) the original amount and date of the loan;~~

~~(C) the maturity date;~~

~~(D) payment terms;~~

~~(E) security, if any; and~~

~~(F) any unusual term or condition of a particular extension of credit.~~

~~(d)~~ **(c)** The department may apply the provisions of 12 CFR 215 (Regulation O) in applying and administering this section.

SECTION 41. IC 28-7-1-17.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 17.2. (a) A credit union may make a loan to the credit union's individual officers under the following terms and conditions:**

**(1) The loan must comply with all requirements under this chapter that apply to loans made to other borrowers.**

**(2) The loan may not be on terms more favorable than those extended to other borrowers unless the loan is made in connection with a benefit or compensation plan that:**

**(A) is widely available to employees of the credit union; and**

**(B) does not give preference to any officers of the credit union over other employees of the credit union.**

**(3) The loan must be promptly reported to the credit union's board of directors.**

**(4) A loan to the officer, the officer's immediate family, or the officer's related interests, either by itself or when added to the amounts of all other loans made under this section to the officer, the officer's immediate family, or the officer's related interests, for any purpose, may not exceed, at any given time, the greater of:**

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**(A) two and one-half percent (2.5%) of the credit union's capital and unimpaired surplus; or**

**(B) twenty-five thousand dollars ($25,000);**

**but in no event more than one hundred thousand dollars ($100,000).**

**(b) The limits set forth in subsection (a)(4) do not apply to any of the following:**

**(1) An extension of credit made under a line of credit approved under this section if the extension of credit is made not later than fourteen (14) months after the line of credit was approved.**

**(2) A loan, in any amount, to finance the education of an officer's child.**

**(3) A loan, in any amount, to finance or refinance the purchase, construction, maintenance, or improvement of a residence of an officer, if:**

**(A) the loan is secured by a first lien on the residence and the residence is owned, or will be owned after the loan is made, by the officer; and**

**(B) in the case of a refinancing, the loan includes only the amount used to repay the original loan, plus any closing costs and any additional amount used for any purpose described in this subdivision.**

**(4) A loan, in any amount, secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.**

**(5) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.**

**(c) A credit union may not make a loan under this section to an officer, the officer's immediate family, or the officer's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the officer, the officer's immediate family, or the officer's related interests, exceeds the lending limits set forth in IC 28-7-1-39.**

**(d) The department may apply the provisions of 12 CFR 215 (Regulation O) in applying and administering this section.**

SECTION 42. IC 28-7-1-17.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 17.3. At least quarterly, the president or manager shall prepare and deliver to the board of**

C o p y

**directors a report listing the outstanding indebtedness of all officers, directors, and committee members. A report prepared under this subsection must be retained at the credit union for three (3) years and shall not be filed with the department unless specifically requested. A report required by this section must include:**

**(1) the amount of each indebtedness; and**

**(2) a description of the terms and conditions of each loan, including:**

**(A) the interest rate;**

**(B) the original amount and date of the loan;**

**(C) the maturity date;**

**(D) payment terms;**

**(E) security, if any; and**

**(F) any unusual term or condition of a particular extension of credit.**

SECTION 43. IC 28-7-1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. A credit union may borrow from any source. The total borrowing of a credit union may not at any time exceed fifty per cent (50%) of the **unimpaired shares** capital **and** surplus ~~and reserve fund~~ of the credit union.

SECTION 44. IC 28-7-1-39, AS AMENDED BY P.L.1-2006, SECTION 493, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 39. (a) As used in this section, "loans and extensions of credit" includes all direct or indirect advances of funds made to a member on the basis of:

(1) an obligation of the member to repay the funds; or

(2) a pledge of specific property by or on behalf of the member and from which the funds advanced are repayable.

The term includes any contractual liability of a credit union to advance funds to or on behalf of a member, to the extent specified by the department.

(b) As used in this section, "member" includes an individual, a sole proprietorship, a partnership, a joint venture, an association, a trust, an estate, a business trust, a limited liability company, a corporation, a sovereign government, or an agency, instrumentality, or political subdivision of a sovereign government, or any similar entity or organization.

(c) Except as provided in subsection (e), the total loans and extensions of credit by a credit union to a member outstanding at any given time and not fully secured, as determined in a manner consistent with subsection (d), by collateral with a market value at least equal to

C o p y

the amount of the loan or extension of credit may not exceed fifteen percent (15%) of the ~~unimpaired~~ capital and ~~unimpaired~~ surplus of the credit union.

(d) Except as provided in subsection (e), the total loans and extensions of credit by a credit union to a member outstanding at any given time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of funds outstanding may not exceed ten percent (10%) of the ~~unimpaired~~ capital and ~~unimpaired~~ surplus of the credit union. The limitation in this subsection is separate from and in addition to the limitation set forth in subsection (c).

(e) The limitations set forth in subsections (c) and (d) are subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the member negotiating it with recourse are not subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in 12 U.S.C. 372 and issued by a financial institution organized or reorganized under the laws of Indiana or any other state or the United States are not subject to any limitation based on capital and surplus.

(3) Loans or extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples are subject to a limitation of thirty-five percent (35%) of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent (115%) of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by any other obligation fully guaranteed as to principal and interest by the United States are not subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitment or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital

C o p y

and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending credit union are not subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any credit union, when the loans or extensions of credit are approved by the director of the department, are not subject to any limitation based on capital and surplus.

~~(8) Loans or extensions of credit to the Student Loan Marketing Association are not subject to any limitation based on capital and surplus.~~

(f) Loans or extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee by the member transferring the paper are subject under this section to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements set forth in subsection (d).

(g) If the credit union's files or the knowledge of the credit union's officers of the financial condition of each maker of consumer paper described in subsection (f) is reasonably adequate, and an officer of the credit union designated for that purpose by the board of directors of the credit union certifies in writing that the credit union is relying primarily upon the responsibility of each maker for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each maker shall be the sole applicable loan limitations.

(h) Loans or extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent (115%) of the face amount of the note covered are subject under this section, notwithstanding the collateral requirements set forth in subsection (d), to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus.

(i) Loans or extensions of credit that arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller and that are secured by the cattle being sold, are subject under this section, notwithstanding the collateral requirements set forth in subsection (d), to a limitation of twenty-five percent (25%) of the capital and surplus.

C o p y

(j) Except as otherwise provided, an officer, director, employee, or attorney of a credit union who stipulates for, receives, or consents or agrees to receive, any fee, commission, gift, or thing of value, from any person, for the purpose of procuring or endeavoring to procure for any member any loan from or the purchase or discount of any paper, note, draft, check, or bill of exchange by the credit union, commits a Class A misdemeanor.

(k) Except as otherwise provided in this chapter, any credit union that holds obligations of indebtedness in violation of the limitations prescribed in this section shall, not later than July 1, 2006, cause the amount of the obligations to conform to the limitations prescribed by this chapter and by the provisions of this section. The department may, in its discretion, extend the time for effecting this conformity, in individual instances, if the interests of the depositors will be protected and served by an extension. Upon the failure of a credit union to comply with the limitations, in accordance with this section or in accordance with any order of the department concerning the limitations, the department may declare that the credit union is conducting its business in an unauthorized or unsafe manner and proceed in accordance with IC 28-1-3.1-2.

(l) The department may apply the provisions of 12 CFR 32 in the application and administration of this chapter.

SECTION 45. IC 28-7-5-2, AS AMENDED BY P.L.57-2006, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. In this chapter, unless the context otherwise requires:

"Director" refers to the director of the department.

"Pawnbroker" means any person, partnership, association, **limited liability company,** or corporation lending money on the deposit or pledge of personal property, or who deals in the purchase of personal property on the condition of selling the property back again at a stipulated price, other than choses in action, securities, or printed evidence of indebtedness.

"Pledge" means personal property deposited with a pawnbroker as security for a loan.

"Pledger" means the person who delivers personal property into the possession of a pawnbroker as security for a loan unless such person discloses that the person is or was acting for another; and in such event "pledger" means the disclosed principal.

"Department" means the department of financial institutions.

"Person" means ~~an~~ **any** individual, ~~a firm, an association, a~~ limited liability company, ~~a~~ **sole proprietorship,** partnership, ~~a joint stock~~

C o p y

~~association,~~ ~~a~~ trust, ~~or~~ ~~a~~ **joint venture,** corporation, **unincorporated organization, or other form of entity, however organized.**

"Month" means a period extending from a given date in one (1) calendar month to the like date in the succeeding calendar month or, if there is no such like date, then to the last day of the succeeding calendar month. For purposes of this chapter, each month is considered to have thirty (30) days.

SECTION 46. IC 28-7-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. No person ~~or entity~~ shall engage in business as a pawnbroker, act as a pawnbroker, transact or solicit business as a pawnbroker, or use in an advertisement a word or statement that states or represents that the person ~~or entity~~ is a pawnbroker, except as authorized by this chapter and without first obtaining a license from the department.

SECTION 47. IC 28-7-5-4, AS AMENDED BY P.L.217-2007, SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) Application for a pawnbroker's license shall be submitted on a form prescribed by the department and must include all information required by the department. An application submitted under this section must identify the location or locations at which the applicant proposes to engage in business as a pawnbroker in Indiana. If any business, other than the business of acting as a pawnbroker under this chapter, will be conducted by the applicant or another person at any location identified under this subsection, the applicant shall indicate for each location at which another business will be conducted:

(1) the nature of the other business;

(2) the name under which the other business operates;

(3) the address of the principal office of the other business;

(4) the name and address of the business's resident agent in Indiana; and

(5) any other information the director may require.

(b) An application submitted under this section must indicate whether ~~(1) the applicant~~ **any individual described in section 8(a)(2) or 8(a)(3) of this chapter** at the time of the application:

**(1)** is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or

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

(c) The director may request that the applicant provide evidence of compliance with this section at:

C o p y

(1) the time of application;
(2) the time of renewal of a license; or
(3) any other time considered necessary by the director.

(d) For purposes of subsection (c), evidence of compliance with this section may include:

(1) criminal background checks, including a national criminal history **background** check **(as defined in IC 10-13-3-12)** by the Federal Bureau of Investigation **for any individual described in subsection (b);**
(2) credit histories; and
(3) other background checks considered necessary by the director.

**If the director requests a national criminal history background check under subdivision (1) for an person described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (c). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

SECTION 48. IC 28-7-5-8, AS AMENDED BY P.L.57-2006, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) Upon an applicant's filing of the application required by section 4 of this chapter and payment of the license fee, if the department finds the financial standing, competence, business experience, and character of:

**(1)** the applicant **and any significant affiliate of the applicant;**
**(2) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and**
**(3) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;**

are such that the business will be operated honestly, fairly, and efficiently and that the convenience and needs of the public exist for the operation of the business in the community wherein the applicant proposes to operate, it shall issue and deliver a license to the applicant, which license shall authorize the applicant to engage in the business of

C o p y

pawnbroking.

**(b)** The director is entitled to request evidence of compliance with the requirements of this section by the licensee, **including any affiliate or person described in subsection (a),** at:

(1) the time of issuance of the license;

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

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

A license shall remain in effect until it is surrendered, revoked, or suspended. If the department denies the application, it shall notify the applicant of the denial and return the sum paid by the applicant as a license fee. The department may hold a public hearing if the department considers the hearing necessary.

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

SECTION 49. IC 28-7-5-10.1, AS ADDED BY P.L.217-2007, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10.1. **(a)** A licensee that decides to cease engaging in business as a pawnbroker in Indiana shall do the following not later than thirty (30) days before closing the licensee's pawnbroking business:

(1) Notify the department of:

(A) the licensee's intention to cease engaging in business as a pawnbroker in Indiana; and

(B) the date on which the licensee's pawnbroking business will cease.

(2) Surrender the license to the department.

(3) Provide the following to all pledgers that have loans outstanding with the licensee:

(A) Notice of:

(i) the licensee's intention to cease engaging in business as a pawnbroker in Indiana; and

(ii) the date on which the licensee's pawnbroking business will cease.

(B) Instructions, approved by the director, on how pledged articles may be redeemed before the date identified under clause (A)(ii).

**(b) If:**

**(1) a licensee ceases engaging in business as a pawnbroker in Indiana without complying with subsection (a); and**

**(2) the director determines that it is in the public interest that the department oversee the liquidation of the licensee's**

C o p y

**business;**

**the director may appoint a liquidating agent to conclude the affairs of the licensee's pawnbroker business in Indiana. The department may use the proceeds of the licensee's bond under section 5 of this chapter to pay the expenses of the liquidation.**

SECTION 50. IC 28-7-5-10.6, AS ADDED BY P.L.217-2007, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, ~~any of the following apply: (1) the licensee~~ **any individual described in section 8(a)(2) or 8(a)(3) of this chapter:**

**(1)** is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; **or**

(2) ~~The licensee~~ has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 4(b) of this chapter:

(1) not later than thirty (30) days after the licensee **or any individual described in section 8(a)(2) or 8(a)(3) of this chapter:**

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

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

whichever applies; or

(2) if the licensee's next license renewal fee under section 11 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 11 of this chapter.

SECTION 51. IC 28-7-5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. Each licensee shall file a report as requested by the director, but not more frequently than annually, giving any relevant information the department may reasonably require concerning the business and operations of each licensed place of business conducted by the licensee within the state. The report must be in the form prescribed by the director. The department may impose a fee ~~of five dollars ($5) per day on any report that is not received when requested.~~ **established under IC 28-11-3-5 for each day the report is delinquent.**

SECTION 52. IC 28-7-5-38.1 IS ADDED TO THE INDIANA

C o p y

CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 38.1. If the department determines, after notice and opportunity for hearing, that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this chapter, impose on the person a civil penalty that does not exceed ten thousand dollars ($10,000) per violation.**

SECTION 53. IC 28-7-5-39 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 39. (a) Records and information generated by licensees in the course of their business are confidential under IC 5-14-3-4.

(b) A law enforcement **or prosecutorial** official may obtain or receive records and information described in subsection (a) relating to pawnbroking transactions for use in the official law enforcement purpose of investigating crime.

(c) Law enforcement officials may disclose the name and address of the pawnbroker to an adverse claimant in the case of a dispute over ownership of property in possession of the pawnbroker.

**(d) A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained by the person.**

**(e) The director may provide for the release of information under this chapter to representatives of state, federal, or foreign:**

**(1) financial institution; or**

**(2) money services business;**

**supervisory agencies.**

SECTION 54. IC 28-8-4-20, AS AMENDED BY P.L.57-2006, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. (a) A person may not engage in the business of money transmission without a license required by this chapter.

(b) An application for a license must be submitted on a form prescribed by the department and must include the information required by the department.

**(c) An application submitted under this section must indicate whether any individuals described in section 35(b)(2) or 35(b)(3) of this chapter:**

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

**(2) have been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other**

C o p y

**jurisdiction.**

~~(c)~~ **(d)** The director may request ~~that the applicant provide~~ evidence of compliance with this section at:

(1) the time of application;

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

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

~~(d)~~ **(e)** For purposes of subsection ~~(c),~~ **(d),** evidence of compliance may include:

(1) criminal background checks, including a national criminal history **background** check **(as defined in IC 10-13-3-12)** by the Federal Bureau of Investigation **for an individual described in section 35(b)(2) or 35(b)(3) of this chapter;**

(2) credit histories; and

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

**If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (d). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

SECTION 55. IC 28-8-4-25, AS AMENDED BY P.L.217-2007, SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. In addition to the items listed in section 24 of this chapter, if an applicant is ~~a corporation,~~ **not organized as a sole proprietorship,** the applicant must provide the following items and information relating to the applicant's ~~corporate~~ **organizational** structure:

(1) State of incorporation **or organization.**

(2) Date of incorporation **or organization.**

(3) A certificate from the state in which the applicant was incorporated **or organized** stating that the ~~corporation~~ **entity** is in good standing.

(4) A description of the ~~corporate~~ **organizational** structure of the applicant, including the following:

(A) The identity of the parent of the applicant.

(B) The identity of each subsidiary of the applicant.

C o p y

(C) The names of the stock exchanges, **if any,** in which the applicant, the parent, and the subsidiaries are publicly traded.

(5) The:

(A) name;

(B) business address;

(C) residence address; and

(D) employment history;

for each ~~executive officer, key shareholder, and officer or manager who will be in charge of the applicant's licensed activities.~~ **individual described in section 35(b)(2) or 35(b)(3) of this chapter.**

(6) The:

(A) history of material litigation; and

(B) the history of criminal indictments, convictions, and guilty or nolo contendere pleas for felonies involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;

for each ~~executive officer, key shareholder, and director of the applicant.~~ **individual described in section 35(b)(2) or 35(b)(3) of this chapter.**

(7) Except as provided in subdivision (8), copies of the applicant's audited financial statements for the current year and, if available, for the preceding two (2) years, including a:

(A) balance sheet;

(B) statement of income or loss;

(C) statement of changes in shareholder equity; and

(D) statement of changes in financial position.

(8) If the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, financial statements for the current year or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the preceding three (3) years may be submitted with the applicant's unaudited financial statements; or

(B) a corporation publicly traded outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted with the applicant's unaudited financial statements.

(9) Copies of filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, not more than one (1) year before the date of filing of the application.

C o p y

SECTION 56. IC 28-8-4-35, AS AMENDED BY P.L.57-2006, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 35. (a) The director shall begin an investigation after an application is complete.

(b) The director shall investigate the ~~(1)~~ financial condition and responsibility, ~~(2)~~ financial and business experience, and ~~(3)~~ character and general fitness of: ~~an~~

**(1) the** applicant **and any significant affiliate of the applicant;**

**(2) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and**

**(3) if known, each controlling person.**

(c) The director may conduct an onsite investigation of the applicant, the reasonable cost of which shall be borne by the applicant.

(d) The director shall issue a license to an applicant authorizing the applicant to engage in the licensed activities in Indiana for a term expiring ~~December~~ **March** 31 of the year in which the license is issued if the director finds that:

(1) the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community; and

(2) the applicant has fulfilled the requirements imposed by this chapter.

(e) ~~On~~ **Upon** application, the director shall determine whether a particular person qualifies as a controlling person. The director may waive any or all requirements of this chapter pertaining to a controlling person for good cause shown.

(f) If the director finds that:

(1) an applicant does not satisfy the requirements in subsection (d); or

(2) an application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may deny the application. The director must set forth the reasons for the denial in writing and send a copy of the reasons to the applicant.

SECTION 57. IC 28-8-4-40.6, AS ADDED BY P.L.217-2007, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 40.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:

(1) The licensee, or any individual described in section ~~25(6)~~ ~~or~~ ~~26(4)~~ **35(b)(2) or 35(b)(3)** of this chapter, is under indictment for

C o p y

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

(2) The licensee, or any individual described in section ~~25(6) or 26(4)~~ **35(b)(2) or 35(b)(3)** of this chapter, has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 24(5)(B) **or** 25(6)(B) ~~or 26(4)(B)~~ of this chapter, whichever applies:

(1) not later than thirty (30) days after the licensee or individual described in section ~~25(6) or 26(4)~~ **35(b)(2) or 35(b)(3)** of this chapter:

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

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

whichever applies; or

(2) if the licensee's next license renewal fee under section 37 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 37 of this chapter.

SECTION 58. IC 28-8-4-45.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 45.5. The following persons are subject to IC 28-1-2-30.5 with respect to any records maintained by the person:**

**(1) A person licensed or required to be licensed under this chapter.**

**(2) An authorized delegate of a person described in subdivision (1).**

SECTION 59. IC 28-8-4-47, AS AMENDED BY P.L.217-2007, SECTION 82, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 47. (a) Notwithstanding any other provision of law, all information or reports obtained by the director from an applicant, a licensee, or an authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including:

(1) all information contained in or related to:

(A) examination;

(B) investigation;

(C) operation; or

(D) condition;

C o p y

reports prepared by, on behalf of, or for the use of the director; or

(2) financial statements, balance sheets, or authorized delegate information;

are confidential and may not be disclosed or distributed outside the department by the director or any officer or employee of the department, except as provided in subsection (b).

(b) The director may provide for the release of information to representatives of:

(1) financial institution **and money services business** supervisory agencies;

(2) law enforcement agencies; or

(3) prosecutorial agencies or offices;

of a state (as defined in IC 28-2-17-19), the United States, or a foreign country. An agency or office that receives information from the director under this subsection shall maintain the confidentiality of the information as described in IC 28-1-2-30.

(c) Nothing in this section shall prohibit the director from releasing to the public a list of persons licensed under this chapter or from releasing aggregated financial data on such licensees.

SECTION 60. IC 28-8-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. As used in this chapter, "person" means ~~an~~ **any** individual, ~~a~~ **sole proprietorship,** partnership, ~~an association, a joint stock association, a~~ trust, ~~or a~~ **joint venture, limited liability company,** corporation, **unincorporated organization, or other form of entity, however organized.**

SECTION 61. IC 28-8-5-11, AS AMENDED BY P.L.217-2007, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) A person shall not engage in the business of cashing checks for consideration without first obtaining a license.

(b) Each application for a license shall be in writing in such form as the director may prescribe and shall include all of the following:

(1) The following information pertaining to the applicant:

(A) Name.

(B) Residence address.

(C) Business address.

(2) The following information pertaining to ~~corporate directors of the applicant, officers of the applicant, owners of the applicant (if a proprietorship), and partners of the applicant, if applicable.~~ **any individual described in section 12(b)(1) of this chapter:**

(A) Name.

(B) Residence address.

(C) Business address.

C o p y

(D) Whether the person:

(i) is, at the time of the application, under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or

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

(3) The address where the applicant's office or offices will be located. If any business, other than the business of cashing checks under this chapter, will be conducted by the applicant or another person at any of the locations identified under this subdivision, the applicant shall indicate for each location at which another business will be conducted:

(A) the nature of the other business;

(B) the name under which the other business operates;

(C) the address of the principal office of the other business;

(D) the name and address of the business's resident agent in Indiana; and

(E) any other information that the director may require.

(4) Such other data, financial statements, and pertinent information as the director may require.

(c) The application shall be filed with a nonrefundable fee fixed by the department under IC 28-11-3-5.

SECTION 62. IC 28-8-5-12, AS AMENDED BY P.L.217-2007, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) The department shall determine the financial responsibility, business experience, character, and general fitness of the applicant before issuing the license.

(b) The department may refuse to issue a license ~~if~~ **for any of the following reasons:**

(1) ~~an applicant who is an individual~~ **Any of the following** has been convicted of a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction: ~~or~~

**(A) An executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant.**

**(B) Any person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant.**

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(2) The application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(c) The director of the department may request evidence of compliance with this section by the licensee at:

(1) the time of application;

(2) the time of renewal of the licensee's license; or

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

(d) For purposes of subsection (c), evidence of compliance may include:

(1) criminal background checks, including a national criminal history **background** check **(as defined in IC 10-13-3-12)** by the Federal Bureau of Investigation **for any individual described in subsection (b)(1);**

(2) credit histories; and

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

**If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (c). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

SECTION 63. IC 28-8-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) A licensee shall keep its books, accounts, and records satisfactory to the department for each transaction for at least three (3) years from the transaction date.

(b) A licensee shall keep its books, accounts, and records separate from those of any other type of business and in a manner that reflects the order of the licensee's transactions.

**(c) A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained by the person.**

SECTION 64. IC 28-10-1-1, AS AMENDED BY P.L.217-2007, SECTION 88, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect December 31, ~~2006.~~ **2007.**

C o p y

SECTION 65. IC 28-11-1-13.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 13.5. (a) The department may accept payment of any of the following by credit card, debit card, charge card, or similar method:**

**(1) A fee established by the department under IC 28-11-3-5.**

**(2) A penalty assessed by the department under this title or IC 24-4.5.**

**(3) A fee assessed:**

**(A) in connection with the director's designation of an automated central licensing system and repository under IC 24-4.5-3-503(10); and**

**(B) for:**

**(i) processing applications and renewals for licenses under IC 24-4.5-3; or**

**(ii) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under IC 24-4.5-3.**

**(b) If a fee or penalty described in subsection (a) is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the department receives payment or credit from the institution responsible for making the payment or credit.**

**(c) The department may contract with a bank or credit card vendor for acceptance of bank or credit cards. If there is a vendor transaction charge or discount fee, whether billed to the department or charged directly to the department's account, the department or the bank or credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the department by the bank or credit card vendor during the most recent collection period.**

SECTION 66. IC 28-11-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The director, with the approval of the members, shall organize the department.

(b) The department must consist of at least the following divisions:

(1) The division of banks and trust companies.

~~(2) The division of building and loan associations.~~

~~(3)~~ **(2)** The division of consumer credit.

~~(4)~~ **(3)** The division of credit unions.

SECTION 67. IC 28-11-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) The department

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shall examine the affairs of every financial institution as often as the department considers necessary. Examinations may be made without notice to the institution to be examined.

(b) In making an examination, the department may examine any of the officers or agents of the institution under oath.

(c) The department may require an independent audit by a certified public accountant, subject to the standards the department determines.

(d) The department, in the classification of assets, may disregard the amount of an asset in its analysis of capital adequacy of the financial institution until the amount of the asset is recovered.

(e) After the examiners complete the examination of a financial institution, the examiners:

(1) shall submit their written findings and recommendations to:

(A) the board of directors; and

(B) other parties authorized by the board of directors and approved by the director; and

(2) may confer with the parties listed in subdivision (1) on the findings and recommendations.

(f) Upon the conclusion of an examination, a full, true, and detailed report of the condition of the financial institution shall be made to the department by the examiners in the form prescribed by the department.

(g) A financial institution subject to examination by the department may not cause, by contract or otherwise, any data processing or other similar service to be performed, either on or off its premises, until written assurances are furnished to the department by the financial institution and the entity providing the service that the performance of the service will be subject to regulation and examination by the department to the same extent as if the service was being performed by the financial institution on its own premises. Entities that provide data processing or other similar services to more than one (1) financial institution need only file one (1) written assurance to cover all financial institutions to which the entity provides services.

(h) The report of an examination conducted under this section:

**(1)** is the exclusive property of the department; and

**(2) except as provided in subsection (i),** shall not be distributed, published, or duplicated without the prior authorization of the director.

**(i) A financial institution that is or seeks to become a member of the Federal Home Loan Bank System may provide a copy of a report of an examination conducted by the department to the Federal Home Loan Bank for the confidential use of the Federal Home Loan Bank if the director and the Federal Home Loan Bank**

C o p y

**have entered into a written agreement that provides that the report of the examination:**

**(1) remains the property of the department; and**

**(2) is not:**

**(A) subject to inspection under IC 5-14-3;**

**(B) subject to subpoena;**

**(C) subject to discovery; or**

**(D) admissible in evidence in any civil action.**

~~(i)~~ **(j) Except as provided in subsection (i),** a person who knowingly or intentionally possesses, distributes, publishes, or duplicates a report of an examination conducted under this section without the prior authorization of the director commits a Class B misdemeanor.

SECTION 68. IC 28-11-3-3, AS AMENDED BY P.L.217-2007, SECTION 97, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. **(a)** The director **or the director's designee** may disclose or make available to a:

(1) state, ~~or~~ federal, **or foreign** law enforcement agency;

(2) state, ~~or~~ federal, **or foreign** financial institution supervisory agency;

(3) state, ~~or~~ federal, **or foreign** prosecutorial agency;

**(4) state, federal, or foreign money services business supervisory agency;**

~~(4)~~ **(5)** private insurer of deposit accounts or share accounts of a financial institution; ~~or~~

~~(5)~~ **(6)** state, ~~or~~ federal, **or foreign** agency responsible for licensing, registering, chartering, or supervising any regulated:

(A) business; or

(B) nonprofit activity; **or**

**(7) the Federal Home Loan Bank;**

confidential information described under IC 28-1-2-30 or pertaining to a regulated business or nonprofit activity.

**(b) Confidential information provided by the director or the director's designee under this section is privileged by law, remains the property of the department, and is not:**

**(1) subject to inspection under IC 5-14-3;**

**(2) subject to subpoena;**

**(3) subject to discovery; or**

**(4) admissible in evidence in any civil action.**

**(c) The director may enter into information sharing agreements with parties authorized to received information under this section.**

SECTION 69. IC 28-11-4-7 IS AMENDED TO READ AS

C o p y

FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) If the department finds that the conditions specified in section 2 or 3 of this chapter have been established, the department may issue a final order.

(b) A final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(c) A final order may do any of the following:

(1) Require the financial institution and its directors, officers, employees, and agents to do any of the following:

(A) Cease and desist from the practice or violation.

(B) Take affirmative action to correct the conditions resulting from the practice or violation.

(2) Suspend or prohibit a director, an officer, or an employee from participating in the affairs of a financial institution or subsidiary.

(3) Impose a civil penalty not to exceed the amount specified in section 9 of this chapter.

(d) A final order shall be issued in writing within ninety (90) days after conclusion of the hearing, unless this period is waived or extended with the written consent of all parties or for good cause shown. ~~A final order issued under this chapter may be made public by the department.~~

(e) If the financial institution, director, or officer does not appear individually or by a duly authorized representative at the hearing, the financial institution, director, or officer is considered to have consented to the issuance of a final order.

**(f) The director, at the director's discretion, may, for the interests of the financial institution or the financial institution's depositors, disclose to the public the contents of any order issued under this section at the time the order is issued.**

SECTION 70. IC 28-11-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. The department may enforce ~~an order issued under this chapter~~ **any of the following** by applying for appropriate relief to a court having jurisdiction:

**(1) An order issued under this chapter.**

**(2) A written agreement entered into by the department and:**

**(A) a financial institution; or**

**(B) any director, officer, employee, or agent of the financial institution.**

**(3) Any condition imposed in writing by the department on:**

**(A) a financial institution; or**

**(B) any director, officer, employee, or agent of the financial institution;**

**in connection with any application, notice, or request concerning the financial institution.**

C o p y

SECTION 71. IC 28-11-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) The director of the department may exercise the enforcement powers of this chapter against an affiliate of a financial institution, **or against an officer, a director, or an employee of the affiliate,** as if the affiliate were a financial institution if the director determines that a practice of the affiliate, **or of the officer, director, or employee,** could cause either:

(1) the financial institution to suffer substantial loss or other damage; or

(2) the interests of the financial institution's depositors to be seriously prejudiced by reason of a violation, practice, or breach of fiduciary duty.

**(b) In exercising the director's enforcement powers under this chapter against an officer, a director, or an employee of an affiliate, the director may:**

**(1) remove the officer, director, or employee from the person's office, position, or employment;**

**(2) prohibit any participation by the officer, director, or employee in the conduct of the affairs of any financial institution; or**

**(3) take both of the actions set forth in subdivisions (1) and (2).**

~~(b)~~ **(c)** The director of the department may issue and serve upon the **officer,** director, or ~~the officer~~ **employee** of the affiliate a notice of charges of the practice, violation, or act.

~~(c)~~ **(d)** For purposes of this section, affiliate has the meaning set forth in IC 28-1-18.2.

SECTION 72. IC 28-11-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) Upon the acceptance of an application under section 3 of this chapter, the department shall investigate and consider all of the following:

(1) The financial standing and character of the incorporators, organizers, directors, principal shareholders, or controlling corporations.

(2) The character, qualifications, and experience of the officers and directors of the proposed financial institution.

(3) The future earnings prospects for the proposed financial institution.

(4) The adequacy of the financial institution's proposed capital, if the financial institution is to be a bank, trust company, corporate fiduciary, or savings bank.

(b) The members of the department may disapprove the application

C o p y

if:

(1) any of the factors listed in subsection (a) are determined to be unfavorable;

(2) any of the incorporators, directors, principal shareholders, or officers of the proposed financial institution have been convicted of a felony under Indiana law, the laws of any other state, or the laws of the United States; or

(3) the applicant has knowingly or intentionally submitted an application under this chapter that contains false information.

(c) The applicant shall submit to the **department or to the** Indiana state police, **as appropriate,** two (2) sets of fingerprints for each incorporator, director, principal shareholder, and officer, if requested by the department **under section 4.5 of this chapter.**

SECTION 73. IC 28-11-5-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4.5. (a) To ~~provide~~ **obtain** additional information for the purposes of section 4 of this chapter, the ~~state police department, at the request of the department shall provide fingerprint and background checks on all incorporators, directors, principal shareholders, and officers~~ **director may require:**

**(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation;**

**(2) credit histories; and**

**(3) other background checks considered necessary by the director;**

**for any incorporator, director, principal shareholder, or officer** of a proposed financial institution.

~~(b) If a disqualifying record is not identified by the state police department, the fingerprints submitted under section 4(c) of this chapter shall be forwarded to the Federal Bureau of Investigation for a national criminal history check.~~

~~(c) The department shall pay all expenses associated with investigations performed by the state police department or the Federal Bureau of Investigation as a result of an application filed under section 3 of this chapter.~~

**(b) If the director requests a national criminal history background check under subsection (a) for any individual described in subsection (a), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate. The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. A national**

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**criminal history background check conducted under subsection (b) may be used by the department to:**

**(1) conduct an investigation under section 4(a)(1) or 4(a)(2) of this chapter; or**

**(2) disapprove an application under section 4(b)(2) of this chapter.**

**The director or the department may not release the results of the national criminal history background check to any private entity.**

SECTION 74. IC 28-11-5-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 10. (a) Subject to subsection (g), a financial institution subject to this chapter may:**

**(1) be organized as a limited liability company;**

**(2) convert to a limited liability company; or**

**(3) merge with or into a limited liability company;**

**under the laws of Indiana or the United States, including any rules or regulations adopted or promulgated under the laws of Indiana or the United States.**

**(b) A bank organized as a limited liability company is subject to:**

**(1) IC 23-18; and**

**(2) this title.**

**If a provision of IC 23-18 conflicts with a provision of this title or with any rule of the department, the provision of this title or the rule the department controls.**

**(c) Any filing required to be made under IC 23-18 shall be made in the same manner as for a bank that is organizing or is organized in stock form.**

**(d) The department may prescribe any requirements for:**

**(1) the articles of organization; and**

**(2) the operating agreement;**

**of a financial institution that is organized and operates as a limited liability company.**

**(e) The department has the exclusive authority under this title to regulate a financial institution organized as a limited liability company. A financial institution that is a limited liability company is subject to the department's authority in the same manner as a bank that is organized in stock form.**

**(f) A financial institution that is a limited liability company is subject to the provisions of this title that apply to banks, except for the provisions concerning corporate governance (IC 28-13), in the same manner as a financial institution that is organized in stock form, subject to the following:**

C o p y

**(1) In the case of a manager managed limited liability company, "director" means a manager of the limited liability company.**

**(2) In the case of a member managed limited liability company, "director" means a member of the limited liability company.**

**(g) A financial institution may not:**

**(1) organize as;**

**(2) convert to; or**

**(3) merge with or into;**

**a limited liability company without the prior approval of the department under this title.**

SECTION 75. IC 28-13-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) A corporation may declare a dividend of so much of the undivided profits of the corporation as is considered expedient by the board of directors.

(b) A corporation must obtain the approval of the department for the payment of a dividend if the total of all dividends declared by the corporation during the calendar year, including the proposed dividend, would exceed the sum of the ~~retained~~ net income for the year to date combined with its retained net income for the previous two (2) years.

(c) As used in subsection (b), "retained net income" means the net income of a specified period, calculated under the consolidated report of income instructions, less the total amount of all dividends declared for the specified period.

(d) The department may establish criteria for a corporation to be exempt from the dividend approval requirements of this section. In establishing the criteria, the department shall consider:

(1) the corporation's composite uniform financial institutions rating assigned as a result of the corporation's most recent federal or state examination, or in the case of a corporate fiduciary, the corporate fiduciary rating assigned as a result of the corporate fiduciary's most recent state examination;

(2) the resulting Tier 1 leverage capital ratio; and

(3) the existence of any corrective or supervisory order or agreement.

SECTION 76. IC 28-13-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) As used in this section, "emergency" means:

(1) any condition or occurrence that:

(A) may interfere physically with the conduct of normal business operations; or

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(B) poses an imminent or existing threat to the safety or security of persons, property, or both persons and property;

at one (1) or more of the offices of a corporation; ~~or~~

**(2) any condition or occurrence that:**

**(A) is declared a state of disaster emergency by the governor under IC 10-14-3-12; and**

**(B) applies to an area that includes one (1) or more of the offices of a corporation; or**

~~(2)~~ **(3)** the death of or funeral services for an employee, officer, or director of a corporation **or for a former employee, officer, or director of a corporation.**

(b) A corporation may be closed on any part of a legal holiday by giving reasonable notice to its customers of its intention to be closed in observance of the holiday.

(c) Whenever a corporation is to be closed on a day or part of a day other than a legal holiday, the board of directors shall pass a resolution concerning the closing, and give reasonable notice of the closing to the customers of the corporation.

(d) The board of directors of a corporation may establish and observe different banking hours and designate different fixed days, if any, for closing the principal office and each separate branch office of the corporation.

(e) Any day designated by the President of the United States or by the governor as a day of mourning, celebration, or other special observance is a legal holiday for corporations.

(f) Whenever the officers of a corporation believe that an emergency exists or is impending, which affects or may affect one (1) or more of a corporation's offices, the officers have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one (1) or more of such offices or, if having opened, to close any one (1) or more of such offices during the continuation of the emergency. The office or offices so closed shall remain closed until the time the officers determine that the emergency has ended. However, such office or offices may not remain closed for more than forty-eight (48) consecutive hours on business days, excluding other legal holidays, without requesting the approval of the director of the department of financial institutions.

(g) A corporation closing an office or offices under subsection (f) shall give prompt notice of its action to the director of the department of financial institutions.

(h) Any date on which a corporation is closed under this section is a legal holiday with respect to the business affairs of the corporation.

C o p y

No liability or loss of rights of any kind, on the part of any corporation, director, officer, or employee, accrues or results by virtue of any closing authorized by this section.

SECTION 77. IC 28-13-16-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. **(a)** The department shall review a financial institution's notice or application to acquire or establish a qualifying or nonqualifying subsidiary to determine:

(1) whether the proposed activities are legally permissible; and

(2) whether the proposal endangers the safety or soundness of the financial institution.

The director shall either approve or disapprove the application for a nonqualifying subsidiary within sixty (60) days after the date on which the department receives the application. The period for approval or disapproval of the application may be extended by the department based on a determination that additional information from the financial institution or additional time for analysis is required.

**(b) If there will be a change in the scope or nature of the business activity of a qualifying subsidiary of a financial institution, the financial institution shall provide the department with written notice before the change occurs. The department shall notify the requesting financial institution of the department's receipt of the notice and shall review the notice to determine:**

**(1) whether the proposed change is legally permissible; and**

**(2) whether the proposed change endangers the safety or soundness of the financial institution.**

**The qualifying subsidiary may exercise or engage in the proposed activity thirty (30) days after the date on which the department receives the financial institution's notice, as indicated in the department's notice of receipt, unless otherwise notified by the department.**

**(c) If there will be a change in the scope or nature of the business activity of a nonqualifying subsidiary of a financial institution, the financial institution shall submit to the department an application containing a complete description of the proposed change. The department shall notify the requesting financial institution of the department's receipt of the application and shall review the application to determine:**

**(1) whether the proposed change is legally permissible; and**

**(2) whether the proposed change endangers the safety or soundness of the financial institution.**

**The director shall either approve or disapprove the application not later than sixty (60) days after the date on which the department**

C o p y

**receives the application. The period for approval or disapproval of the application may be extended by the department based on a determination that additional information from the financial institution or additional time for analysis is required.**

SECTION 78. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2008]: IC 28-8-4-22; IC 28-8-4-23; IC 28-8-4-26.

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 352, 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 6, between lines 4 and 5, begin a new line blocked left and insert:

"**A determination by the director under this paragraph must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this paragraph.**".

Page 6, line 27, delete "creditor's agent" and insert "**person acting on behalf of the creditor**".

Page 6, line 28, delete "creditor's agent" and insert "**person acting on behalf of the creditor**".

Page 7, line 24, delete "creditor's agent" and insert "**person acting on behalf of the creditor**".

Page 7, line 26, delete "creditor's" and insert "**person acting on behalf of the creditor**".

Page 7, line 27, delete "agent".

Page 7, line 29, delete "creditor's agent" and insert "**person acting on behalf of the creditor**".

Page 8, line 4, delete "creditor's agent" and insert "**person acting on behalf of the creditor**".

Page 8, line 28, delete "creditor's agent" and insert "**person acting on behalf of the creditor**".

Page 10, line 19, strike "or".

Page 10, line 20, delete "." and insert ", **a joint venture, an unincorporated organization, or any other entity, however organized.**".

Page 10, line 24, after "or" reset in roman "an".

Page 10, line 24, delete "any".

Page 10, line 24, after "and" insert "**or**".

Page 10, line 24, after "and" reset in roman "an".

Page 10, line 25, rest in roman "organization.".

Page 10, line 25, delete "sole proprietorship, partnership, trust, joint venture,".

Page 10, delete lines 26 through 27.

Page 12, line 6, delete "providing property tax forms (IC 24-4.5-3-701),".

C o p y

Page 12, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 6. IC 24-4.5-3-402, AS AMENDED BY P.L.217-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 402. (1) **This section does not apply to a first lien mortgage transaction.**

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

~~(2)~~ **(3)** For the purposes of this section, "terms of the refinancing" means:

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

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

~~(3)~~ **(4)** If a consumer loan is made under the authority of the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3802 et seq.), the note evidencing the mortgage must contain a reference to the applicable federal law.".

Page 25, delete lines 22 through 31.

Page 26, line 4, delete "means:" and insert "**means an individual consumer, or the individual's legal representative, who obtains or has obtained from the person a financial:**

**(1) product; or**

**(2) service;**

**that is to be used primarily for personal, family, or household purposes. The term does not include an affiliate of the person.**".

Page 26, delete lines 5 through 12.

Page 32, line 33, after "not" insert "**create a substantial likelihood of misleading the public by implying that the person, firm, limited**

C o p y

**liability company, or corporation is a state or federally chartered bank or savings bank.**".

Page 32, delete lines 34 through 37.

Page 54, delete lines 30 through 42, begin a new paragraph and insert:

"SECTION 41. IC 28-7-1-17.1, AS ADDED BY P.L.141-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17.1. (a) ~~Subject to subsection (b),~~ A credit union may make a loan to the credit union's individual ~~officers,~~ directors and committee members under the following terms and conditions:

(1) The loan must comply with all requirements under this chapter that apply to loans made to other borrowers.

(2) The loan may not be on terms more favorable than those extended to other borrowers.

(3) The borrower may not:

(A) take part in the consideration of; or

(B) vote on;

the borrower's loan application.

(4) Except as provided in subsection (b), a credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the individual's immediate family, or the individual's related interests, exceeds the greater of:

(A) five percent (5%) of the credit union's ~~unimpaired~~ capital and surplus; or

(B) twenty-five thousand dollars ($25,000);

unless the loan is first approved by the credit union's board of directors.

(5) A credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the individual's immediate family, or the individual's related interests, exceeds the lending limits set forth in IC 28-7-1-39.

(6) ~~Subject to subsection (b),~~ The total amount of all loans made under this section may not exceed the credit union's ~~unimpaired~~ capital and surplus. **However, the limit set forth in this subdivision does not apply to either of the following:**

**(A) A loan, in any amount, secured by a perfected security**

C o p y

**interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.**

**(B) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.**

(b) ~~The limits set forth in subsections~~ **Approval by the board of directors under subsection** (a)(4) ~~and (a)(6) do not apply to any of the following: (1)~~ **is not required for** an extension of credit made under a line of credit approved under subsection (a)(4) if the extension of credit is made not later than fourteen (14) months after the line of credit was approved.

~~(2) A loan, in any amount, to finance the education of an individual's child.~~

~~(3) A loan, in any amount, to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the individual, if:~~

~~(A) the loan is secured by a first lien on the residence and the residence is owned, or will be owned after the loan is made, by the individual; and~~

~~(B) in the case of a refinancing, the loan includes only the amount used to repay the original loan, plus any closing costs and any additional amount used for any purpose described in this subdivision.~~

~~(4) A loan, in any amount, secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.~~

~~(5) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.~~

~~(6) A loan made to an individual, the individual's immediate family, or the individual's related interests, for any other purpose, if the total amount of loans to the individual, the individual's immediate family, or the individual's related interests under this section does not exceed, at any given time, the greater of:~~

~~(A) two and one-half percent (2.5%) of the credit union's unimpaired capital and unimpaired surplus; or~~

~~(B) twenty-five thousand dollars ($25,000);~~

~~but in no event more than one hundred thousand dollars ($100,000).~~

~~(c) At least quarterly, the president or manager shall prepare and~~

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~~deliver to the board of directors a report listing the outstanding indebtedness of all officers, directors, and committee members. A report prepared under this subsection must be retained at the credit union for three (3) years and shall not be filed with the department unless specifically requested. A report required by this subsection must include:~~

~~(1) the amount of each indebtedness; and~~

~~(2) a description of the terms and conditions of each loan, including:~~

~~(A) the interest rate;~~

~~(B) the original amount and date of the loan;~~

~~(C) the maturity date;~~

~~(D) payment terms;~~

~~(E) security, if any; and~~

~~(F) any unusual term or condition of a particular extension of credit.~~

~~(d)~~ **(c)** The department may apply the provisions of 12 CFR 215 (Regulation O) in applying and administering this section.

SECTION 42. IC 28-7-1-17.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 17.2. (a) A credit union may make a loan to the credit union's individual officers under the following terms and conditions:**

**(1) The loan must comply with all requirements under this chapter that apply to loans made to other borrowers.**

**(2) The loan may not be on terms more favorable than those extended to other borrowers unless the loan is made in connection with a benefit or compensation plan that:**

**(A) is widely available to employees of the credit union; and**

**(B) does not give preference to any officers of the credit union over other employees of the credit union.**

**(3) The loan must be promptly reported to the credit union's board of directors.**

**(4) A loan to the officer, the officer's immediate family, or the officer's related interests, either by itself or when added to the amounts of all other loans made under this section to the officer, the officer's immediate family, or the officer's related interests, for any purpose, may not exceed, at any given time, the greater of:**

**(A) two and one-half percent (2.5%) of the credit union's capital and unimpaired surplus; or**

C o p y

**(B) twenty-five thousand dollars ($25,000);**

**but in no event more than one hundred thousand dollars ($100,000).**

**(b) The limits set forth in subsection (a)(4) do not apply to any of the following:**

**(1) An extension of credit made under a line of credit approved under this section if the extension of credit is made not later than fourteen (14) months after the line of credit was approved.**

**(2) A loan, in any amount, to finance the education of an officer's child.**

**(3) A loan, in any amount, to finance or refinance the purchase, construction, maintenance, or improvement of a residence of an officer, if:**

**(A) the loan is secured by a first lien on the residence and the residence is owned, or will be owned after the loan is made, by the officer; and**

**(B) in the case of a refinancing, the loan includes only the amount used to repay the original loan, plus any closing costs and any additional amount used for any purpose described in this subdivision.**

**(4) A loan, in any amount, secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.**

**(5) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.**

**(c) A credit union may not make a loan under this section to an officer, the officer's immediate family, or the officer's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the officer, the officer's immediate family, or the officer's related interests, exceeds the lending limits set forth in IC 28-7-1-39.**

**(d) The department may apply the provisions of 12 CFR 215 (Regulation O) in applying and administering this section.**".

Delete pages 55 through 57.

Page 58, delete lines 1 through 3.

Page 77, line 34, delete "If the order is not".

Page 77, delete lines 35 through 38.

Page 80, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 76. IC 28-11-5-10 IS ADDED TO THE INDIANA

C o p y

CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 10. (a) Subject to subsection (g), a financial institution subject to this chapter may:**

**(1) be organized as a limited liability company;**

**(2) convert to a limited liability company; or**

**(3) merge with or into a limited liability company;**

**under the laws of Indiana or the United States, including any rules or regulations adopted or promulgated under the laws of Indiana or the United States.**

**(b) A bank organized as a limited liability company is subject to:**

**(1) IC 23-18; and**

**(2) this title.**

**If a provision of IC 23-18 conflicts with a provision of this title or with any rule of the department, the provision of this title or the rule the department controls.**

**(c) Any filing required to be made under IC 23-18 shall be made in the same manner as for a bank that is organizing or is organized in stock form.**

**(d) The department may prescribe any requirements for:**

**(1) the articles of organization; and**

**(2) the operating agreement;**

**of a financial institution that is organized and operates as a limited liability company.**

**(e) The department has the exclusive authority under this title to regulate a financial institution organized as a limited liability company. A financial institution that is a limited liability company is subject to the department's authority in the same manner as a bank that is organized in stock form.**

**(f) A financial institution that is a limited liability company is subject to the provisions of this title that apply to banks, except for the provisions concerning corporate governance (IC 28-13), in the same manner as a financial institution that is organized in stock form, subject to the following:**

**(1) In the case of a manager managed limited liability company, "director" means a manager of the limited liability company.**

**(2) In the case of a member managed limited liability company, "director" means a member of the limited liability company.**

**(g) A financial institution may not:**

**(1) organize as;**

**(2) convert to; or**

C o p y

**(3) merge with or into;**
**a limited liability company without the prior approval of the department under this title.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 352 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 10, Nays 0.

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