SENATE BILL No. 571

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5; IC 24-7; IC 28-1; IC 28-2-13; IC 28-5-1-6.3; IC 28-6.1-6; IC 28-7-1.

Synopsis: Various financial institution matters. Makes various changes to the laws concerning: (1) financial institutions; (2) debt management companies; (3) pawnbrokers; (4) money transmitters; (5) check cashers; (6) persons licensed under the Uniform Consumer Credit Code; and (7) rental purchase agreements. Repeals provisions being superseded by this bill. Repeals a provision requiring the display of a license by a debt management company.

Effective: July 1, 2009.

Paul

January 20, 2009, read first time and referred to Committee on Insurance and Financial Institutions.

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Introduced

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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SENATE BILL No. 571

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 24-4.5-1-102, AS AMENDED BY P.L.90-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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, ~~2007.~~ **2008.**

(5) This article applies to a transaction if the director 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 2. IC 24-4.5-3-209, AS AMENDED BY P.L.145-2008, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

(a) if the loan is refinanced or consolidated with the same creditor;

(b) for prepayment by proceeds of any insurance or acceleration after default; or

(c) after three (3) years from the contract date.

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

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subsection, the total finance charge does not include the following:

(a) The loan origination fee allowed under IC 24-4.5-3-201.

(b) The debtor paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

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

(a) one hundred dollars ($100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars ($100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with subdivision (a).

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

(4) As used in this subsection, "mortgage transaction" means a consumer credit loan in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short

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sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. **A creditor, servicer, or creditor's agent accepting a short sale may not seek a deficiency judgment or any other damages from the debtor.** As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 3. IC 24-4.5-6-113, AS AMENDED BY P.L.217-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 113. Civil Actions by Department — (1) After demand, the department may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this article. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this article, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the department, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the department to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to

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this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

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

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

SECTION 4. IC 24-4.5-6-118 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 118. Except as otherwise provided in this chapter, IC 4-21.5 applies to proceedings authorized by this chapter. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County, Indiana, at a location designated by the director.**

SECTION 5. IC 24-4.5-6-119 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 119. (a) Subject to subsection (b), if the director determines that a director, an officer, or an employee of a creditor:**

(1) has committed a violation of a statute, a rule, a final cease and desist order, a condition imposed in writing by the director in connection with the grant of an application or other request by the creditor, or a written agreement between the creditor and the director;

(2) has committed fraudulent or unconscionable conduct; or

(3) has been convicted of, has pleaded guilty or nolo contendere to, or is under indictment for a felony under the laws of Indiana or any other jurisdiction;

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the director may issue and serve upon the person a notice of charges and of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting participation by the person in the conduct of the affairs of any creditor, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach described in subsection (a) is subject to the authority of the director under subsection (a) if the director finds any of the following:

(1) The interests of the creditor's customers could be seriously prejudiced by reason of the violation, practice, or breach.

(2) The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.

(3) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for state or federal law and regulations, and for the consumer protections contained in this article.

(c) A person who:

(1) is under indictment for;

(2) has been convicted of; or

(3) has pleaded guilty or nolo contendere to;

a felony under the laws of Indiana or any other jurisdiction may not serve as an officer, a director, or an employee of a creditor, or serve in any similar capacity, unless the person obtains the written consent of the director.

(d) A creditor that willfully permits a person to serve the creditor in violation of subsection (c) is subject to a civil penalty of five hundred dollars ($500) for each day the violation occurs.

SECTION 6. IC 24-4.5-6-120 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 120. (a) A notice issued under section 119 of this chapter must:**

(1) be in writing;

(2) contain a statement of:

(A) the facts constituting the alleged violation, practice, or breach;

(B) the facts alleged in support of the violation, practice, or breach; and

(C) the director's intention to issue an order under section 119(a) of this chapter;

(3) be delivered to the board of directors of the creditor;

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(4) be delivered to the officer, director, or employee to which the notice applies;

(5) specify the procedures that must be followed to initiate a hearing to contest the alleged violation, practice, or breach; and

(6) if the director suspends or prohibits the officer, director, or employee from participation in the affairs of the creditor as described under subsection (e), a statement of the suspension or prohibition.

(b) If a hearing is requested not later than ten (10) days after service of the notice described under subsection (a), the director or designee of the director shall hold a hearing concerning the alleged violation, practice, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The director or designee of the director, based on the evidence presented at the hearing, shall enter a final order in accordance with section 122 of this chapter.

(c) If no hearing is requested within the period of time specified in subsection (b), the director may proceed to issue a final order under section 122 of this chapter on the basis of the facts set forth in the notice described under subsection (a).

(d) An officer, director, or employee of a creditor who is removed from a position under a removal order under section 122 of this chapter that has become final may not, without the approval of the director, participate in the conduct of the affairs of a licensee described under IC 24-4.5-3.

(e) The director may, for the protection of the creditor or the interests of the creditor's customers, suspend from office or prohibit from participation in the affairs of the creditor an officer, a director, or an employee of a creditor who is the subject of a written notice served by the director under subsection (a). A suspension or prohibition under this subsection becomes effective upon service of the notice. Unless stayed by a court in a proceeding authorized by subsection (f), the notice shall remain in effect pending completion of a proceeding under subsection (b) and until the effective date of an order entered by the director under subsection (b) or (c). If the director suspends or prohibits participation of an officer, a director, or an employee under this subsection, copies of the notice shall also be served upon the creditor or affiliate of which the person is an officer, a director, or an employee.

(f) Not more than ten (10) days after an officer, a director, or an

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employee has been suspended from office or prohibited from participation in the conduct of the affairs of the creditor or affiliate under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings under subsection (b). The court may stay a suspension of prohibition of the officer, director, or employee.

(g) The department shall maintain an official record of a proceeding under this chapter.

SECTION 7. IC 24-4.5-6-121 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 121. If the director enters into a consent to a final order with a director, officer, or employee, the director is not required to issue and serve a notice of charges upon the director, officer, or employee under section 119 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges. The director shall provide a copy of the consent order to the board of directors of the creditor.**

SECTION 8. IC 24-4.5-6-122 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 122. (a) Subject to section 120 of this chapter, if the director determines that a director, an officer, or an employee of a creditor has committed an act described in section 119 of this chapter, the director 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) In exercising the director's enforcement powers under this chapter against an officer, director, or employee, the director may:

(1) remove the officer, director, or employee from the officer's, director's, or employee's office, position, or employment;

(2) prohibit any participation by the officer, director, or employee in the conduct of the affairs of any creditor; or

(3) take both of the actions set forth in subdivisions (1) and (2).

(d) A final order shall be issued in writing not later than ninety (90) days after conclusion of a hearing, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(e) If the officer, director, or employee does not appear individually or by a duly authorized representative at the hearing,

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the officer, director, or employee is considered to have consented to the issuance of a final order.

(f) The director may keep a final order confidential if the director determines that the immediate release of the order would endanger the stability of the creditor. However, after two (2) years following the date that an order is issued, a final order is no longer confidential.

(g) The remedies provided in this chapter are in addition to other remedies contained in this article.

SECTION 9. IC 24-4.5-6-123 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 123. (a) A final order issued under section 122 of this chapter is effective the eleventh day after the date the order is served on the creditor and the officer, director, or employee. However, a final order issued upon consent under section 121 of this chapter is effective at the time specified in the order.**

(b) A final order remains effective and enforceable as provided in the order.

(c) The department or a reviewing court may stay, modify, or vacate a final order.

SECTION 10. IC 24-4.5-6-124 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 124. (a) The director may impose a civil penalty under a final order issued under section 122 of this chapter. A civil penalty imposed on a director or an officer may not exceed fifteen thousand dollars ($15,000) for each practice, violation, or breach found to have been committed.**

(b) The director shall consider the following factors in determining the amount of a civil penalty that should be assessed against a director, an officer, or an employee:

(1) The appropriateness of the civil penalty with respect to the financial resources and good faith of the individual charged.

(2) The gravity of the practice, violation, or breach.

(3) The history of previous practices, violations, or breaches.

(4) The economic benefit derived by the individual from the practice, violation, or breach.

(5) Other factors that justice requires.

(c) A creditor may not indemnify a director, an officer, or an employee for a civil penalty imposed against the director or officer under this section.

(d) Civil penalties shall be deposited in the financial institutions

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fund established by IC 28-11-2-9.

SECTION 11. IC 24-4.5-6-125 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 125. The department may enforce any of the following by applying for appropriate relief to a court having jurisdiction:**

(1) An order issued under section 121 or 122 of this chapter.

(2) A written agreement entered into by the department and a director, an officer, an employee, or an agent of the creditor.

(3) Any condition imposed in writing by the department on a director, an officer, or an employee of the creditor.

SECTION 12. IC 24-4.5-6-126 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 126. (a) The director may exercise the enforcement powers of this chapter against a director, an officer, or an employee of the affiliate, as if the affiliate were a creditor if the director determines that a practice of the director, officer, or employee of the affiliate, could cause either:**

(1) the creditor to suffer substantial loss or other damage; or

(2) the interests of the creditor's customers to be seriously prejudiced by reason of a violation or practice.

(b) In exercising the director's enforcement powers under this chapter against a director, an officer, or an employee of an affiliate, the director may:

(1) remove the director, officer, or employee from the director's, officer's, or employee's office, position, or employment;

(2) prohibit any participation by the director, officer, or employee in the conduct of the affairs of any creditor; or

(3) take both of the actions set forth in subdivisions (1) and (2).

(c) The director may issue and serve upon the director, officer, or employee of the affiliate a notice of charges of the practice, violation, or breach.

SECTION 13. IC 24-7-1-6, AS ADDED BY P.L.90-2008, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. This article does not apply to the rental of a musical instrument through **a program offered at** an elementary or a secondary school **with the approval of the school.**

SECTION 14. IC 24-7-4-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 13. A lessor may not accept payment from a lessee**

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and hold the amount of the payment in a reserve account for future payments. Any amounts paid by a lessee must be applied as a rental payment or to an accrued permissible additional charge.

SECTION 15. IC 24-7-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The department shall enforce this article. To carry out this responsibility, the department may do the following:

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

(2) Issue and enforce administrative orders under IC 4-21.5.

(3) Counsel persons and groups on their rights and duties under this article.

(4) Establish programs for the education of consumers with respect to rental purchase agreement practices and problems.

(5) Make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public.

(6) Adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to carry out this article.

(7) Maintain more than one (1) office within Indiana.

(8) Bring a civil action to restrain a person from violating this article and for other appropriate relief.

(9) Impose a civil penalty under IC 4-21.5 of not more than ~~one thousand dollars ($1,000)~~ **ten thousand dollars ($10,000)** for a violation of this article or a rule adopted under this article.

SECTION 16. IC 24-7-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person subject to this article shall make the books and records of the person reasonably available for inspection by the department or the department's representative. **At a minimum, every lessor shall keep a record of all payments remitted by the lessor on a rental purchase agreement, including the following:**

(1) The name of the lessee.

(2) The date of each transaction.

(3) The total amount of each payment.

(4) A breakdown of each payment reflecting:

(A) each type of charge; and

(B) the amount of each type of charge.

The method of maintaining this data is at the discretion of the lessor, provided that hard copies of the required data are readily available. The record keeping system of the lessor shall be made available in Indiana for examination. The director shall determine

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the sufficiency of the records and whether the lessor has made the required information reasonably available.

(b) In administering this article and in order to determine compliance with this article, the department or the department's representative may examine the books and records of persons subject to the article and may make investigations of persons necessary to determine compliance. For this purpose, the department may administer oaths or affirmations, and, upon the department's own motion or upon request of any party, may subpoena witnesses, compel their attendance, compel testimony, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(c) If the person's records are located outside Indiana, the person shall, at the person's option, either make them available to the department at a convenient location in Indiana, or pay the reasonable and necessary expenses for the department or the department's representative to examine them at the place where they are maintained. The department may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the department's behalf.

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

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

(f) A lessor shall use generally accepted accounting principles and practices in keeping books and records so that the department or the department's representative may determine if the lessor is in compliance with this article or a rule adopted under this article.

(g) A lessor shall keep the lessor's books and records that pertain to a rental purchase agreement for at least two (2) years after the rental purchase agreement has terminated.

SECTION 17. IC 24-7-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. The notification required under section 1 of this chapter must ~~state~~ **include** the

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following:

(1) The name of the lessor.

(2) The name in which business is transacted if different from subdivision (1).

(3) The address of the principal office, which may be outside Indiana.

(4) The address of all offices or stores, if any, in Indiana at which rental purchase agreements are made.

(5) If rental purchase agreements are made in a place other than an office or retail store in Indiana, a brief description of the manner in which they are made.

(6) The address of the designated agent upon whom service of process may be made in Indiana.

(7) Other information required by the director of the department.

SECTION 18. IC 24-7-8-4, AS AMENDED BY P.L.57-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A lessor required to file a notification with the department under section 1 of this chapter shall pay to the department the following fees:

(1) A fee fixed by the department under IC 28-11-3-5 with the initial notification filed with the department.

(2) A fee fixed by the department under IC 28-11-3-5 for each place of business operated by the lessor on December 31 of the preceding year with each annual notification subsequently filed with the department.

(b) In addition to the fee required under subsection (a)(2), if the department examines the books and records of the lessor, the lessor shall pay to the department all reasonably incurred costs of the examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5.

(c) The department may impose a fee ~~of five dollars ($5)~~ **fixed by the department under IC 28-11-3-5** for each day a lessor is late in:

(1) submitting the information required under IC 24-7-8-2; or

(2) paying a fee under subsection (a).

~~Notwithstanding the total number of places of business operated by a lessor, the department may not impose a late fee of more than five dollars ($5) for each day a lessor is late in paying a fee described under subsection (a)(2).~~

SECTION 19. IC 28-1-2-23, AS AMENDED BY P.L.217-2007, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. (a) A corporation or an individual acting

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directly, indirectly, or through or in concert with one (1) or more other corporations or individuals may not acquire control of any bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company unless the department has received **and approved** an application for change in control. ~~by which~~ The department ~~is given~~ **has not more than** one hundred twenty (120) days ~~prior written notice of the proposed change in control and within that time the department has issued~~ **following receipt of an application to issue** a notice approving the proposed change in control. The application shall contain the name and address of the corporation, individual, or individuals who propose to acquire control.

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

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

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

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

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

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

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

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

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

(d) As used in this section, "holding company" means any company (as defined in IC 28-2-15-5 before July 1, 1992, and as defined in

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IC 28-2-16-5 beginning July 1, 1992) that directly or indirectly controls one (1) or more state chartered financial institutions.

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

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

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

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

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

SECTION 20. IC 28-1-2-30.5, AS ADDED BY P.L.90-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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 **IC 24 or** this title.

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

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(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.

(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

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(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 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.

(k) A person to whom this section applies shall provide at the person's cost any records that the director considers relevant or material to an examination, investigation, or other matter under consideration by the department.

SECTION 21. IC 28-1-3.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Immediately upon the taking possession of the business and property of any financial institution under section 2 of this chapter, the department shall give notice by:

(1) posting the notice at the main entrance of the principal office of the financial institution;

(2) causing the notice to be served upon the president or other

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executive officer actively in charge of the business of the financial institution; and

(3) filing the notice in the office of the circuit court in the county where the principal office of the financial institution is located.

(b) Upon the filing of the notice under subsection (a), the clerk shall:

(1) note the filing of the notice upon the records of the receivership court; and

(2) enter the cause as a civil action upon the dockets of the court under the name and style of "In the matter of the liquidation of _____" (inserting the name of the financial institution).

(c) The receivership court may hear and determine all issues and matters pertaining to or connected with the liquidation of the financial institution, including:

(1) the amount of the compensation and necessary expenses of any special representative, assistant, accountant, agent, or attorney employed by the department, or the receiver appointed by the department, as set forth in this chapter; and

(2) all papers and pleadings pertaining to the liquidation proceedings.

(d) All entries, orders, judgments, and decrees of the receivership court in connection with the liquidation proceedings shall be filed and entered of record in the cause of action.

(e) The rights and liabilities of a financial institution and of its creditors, depositors, shareholders and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date of the filing of the notice of possession with the receivership court. In the case of mutual debts or mutual credits of equal priority between the financial institution and another person, the credits and debts shall be set off and the balance only shall be allowed or paid. The right to set off shall be determined as of the date of the filing of the notice of possession of the financial institution under subsection (a).

(f) Notwithstanding this section, if the Federal Deposit Insurance Corporation is appointed receiver of a financial institution, subsections (a)(3), (b), (c), and (d) do not apply and applicable federal law governs the receivership.

SECTION 22. IC 28-1-3.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The department may appoint the receiver of the closed financial institution. ~~If the proposed receiver accepts the appointment,~~ **Unless the receiver is the Federal Deposit Insurance Corporation,** the department, **upon acceptance of the appointment of a receiver,** shall make immediate

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application to the receivership court for confirmation of the receiver. The receivership court shall approve the department's application if it finds that to do so would be in the public interest. The application may be acted on by the receivership court without any notice except that provided in section 4 of this chapter. The receiver shall give a bond the director considers appropriate. However, a ~~Federal Deposit Insurance Agency~~ **federal deposit insurance agency** shall not be required to post any bond. If the receiver is not a ~~Federal Deposit Insurance Agency,~~ **federal deposit insurance agency,** the director may agree to reasonable compensation for the receiver.

(b) Upon appointment as receiver, title to all assets of the financial institution vest in the receiver without the execution of any instruments of conveyance, assignment, transfer, or endorsement. If no other receiver is appointed as provided in this chapter, the department shall act as receiver and has all of the powers and duties of a receiver as provided in this chapter.

(c) Except as otherwise provided, the sole and exclusive right to liquidate and terminate the affairs of any financial institution is vested in the receiver appointed under this section, and **except as otherwise provided by law,** no other receiver, assignee, trustee, or liquidating agent shall be appointed by any court or any other person.

(d) After the department has taken possession of the business and property for any financial institution, no suit, action, or other proceeding at law or in equity shall be commenced or prosecuted against the financial institution upon any debt, obligation, claim, or demand.

(e) No person, firm, limited liability company, ~~or~~ corporation, **or other entity** holding any of the property or credits of the financial institution shall have any lien or charge against the property or credits for any payment, advance, or clearance made after the department has taken possession. A lien shall not attach to any of the assets or property of the financial institution by reason of the entry of any judgment recovered against the institution after the department has taken possession of its business and property and while the possession continues.

(f) A receiver appointed to liquidate a corporate fiduciary must have sufficient experience in fiduciary matters.

SECTION 23. IC 28-1-3.1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. The receiver of a closed financial institution may do the following:

(1) Take possession of all books, records, and assets of the financial institution.

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(2) Collect all debts, claims, and judgments belonging to the financial institution and do such other acts as are necessary to preserve and liquidate its assets.

(3) Execute in the name of the financial institution any instrument necessary or proper to effectuate its powers or perform its duties as receiver.

(4) Initiate, pursue, and defend litigation involving any right, claim, interest, or liability of the financial institution.

(5) Exercise any and all fiduciary functions of the financial institution as of the date of appointment as receiver.

(6) Borrow money as necessary in the liquidation of the financial institution and secure the borrowings by the pledge or mortgage of assets.

(7) Abandon or convey title to any holder of a mortgage, security deed, security interest, or lien against property in which the financial institution has an interest whenever the receiver determines that to continue to claim that interest is burdensome and of no advantage to the financial institution, its depositors, creditors, or shareholders.

(8) Subject to the approval of the receivership court:

(A) sell any and all real and personal property to compromise any debt, claim, or judgment due to the financial institution and discontinue any action or other proceeding pending; or

(B) pay off all mortgages, securities deeds, security agreements, and liens upon any real or personal property belonging to the financial institution and purchase at a judicial sale or at a sale authorized by court order, any real or personal property in order to protect the financial institution's equity in that property.

(9) If, at the time of liquidation, a closed financial institution holds property in trust for an individual or a corporation under or by virtue of a trust instrument, the administration of the property must be handled in the manner set forth in IC 28-1-9-7.

Notwithstanding this section, when the Federal Deposit Insurance Corporation is appointed receiver of a financial institution, subdivision (8) does not apply.

SECTION 24. IC 28-1-3.1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. The receiver may, with ex parte approval of the receivership court, sell all or any part of the financial institution's assets to another state or federally chartered financial institution or to a federal deposit insurance agency acting in its corporate capacity. **The Federal Deposit Insurance Corporation**

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is not required to seek ex parte approval of the receivership court. The receiver may also borrow from a federal deposit insurance agency any amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing state or federally chartered financial institution, assigning any part or all of the assets of the financial institution as security for the loan.

SECTION 25. IC 28-1-3.1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) All parties having claims against the closed financial institution shall present their claims supported by proof to the receiver within one hundred eighty (180) days after the department has taken possession.

(b) The receiver shall cause notice of the claims procedure prescribed by this section to be:

(1) published once a week for twelve (12) consecutive weeks in a newspaper of general circulation published in the county in which the receivership court is located; and

(2) mailed to each person whose name appears as a creditor upon books of the financial institution at the person's last address of record.

(c) Within one hundred eighty (180) days following receipt of claim, the receiver shall notify in writing any claimant whose claim has been rejected. Notice is effective when mailed. Any claimant whose claim has been rejected by the receiver may petition the receivership court for a hearing on the claim within sixty (60) days from the date the claim is rejected.

(d) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

SECTION 26. IC 28-1-3.1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. Any claims filed after the one hundred eighty (180) day claim period prescribed by section 8 of this chapter and subsequently accepted by the receiver or allowed by the receivership court shall be entitled to share in the distribution of assets only to the extent of the undistributed assets in the hands of the receiver on the date the claims are accepted or allowed. **If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.**

SECTION 27. IC 28-1-3.1-10.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.1. (a) All claims against the financial institution that are proved to the satisfaction of the receiver or approved by the receivership court shall be paid in the following order:

(1) Claims of persons referred to in IC 28-1-12-6 as having

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preference and priority.

(2) Administration expenses of the liquidation, including the following:

(A) Court costs.

(B) Compensation and actual expenses incurred by the department or the receiver in order to facilitate the liquidation.

(C) Compensation of each regular officer or employee of the receiver for the time actually devoted by the officer or employee to the liquidation of the financial institution at an amount not to exceed the compensation paid to the officer or employee for the performance of the regular duties of the officer or employee.

(D) Actual expenses of each regular officer or employee of the receiver that are necessarily incurred in the performance of the duties of the officer or employee in the liquidation.

(E) Compensation and expenses of any special representative, assistant, accountant, agent, or attorney employed by the receiver.

(F) The reasonable general overhead expenses that are incurred by the department or the receiver in the liquidation of the affairs of the financial institution.

(3) Claims given priority under other provisions of state or federal law.

(4) Deposit obligations.

(5) Other general liabilities.

(6) Debt subordinated to the claims of general creditors.

(7) Equity capital securities.

(b) Interest may not be paid on any claim until the full principal amount of every claim within the same class has been paid.

(c) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

SECTION 28. IC 28-1-3.1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. **(a)** Within one hundred eighty (180) days of the date that the department has taken possession, the receiver may, at his election, reject:

(1) any executory contract to which the closed financial institution is a party without any further liability to the closed financial institution or the receiver; or

(2) any obligation of the financial institution as a lessee of real or personal property.

The receiver's election to reject a lease shall create no claim for rent other than rent accrued to the date of termination or for actual damages,

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if any, for the termination not to exceed the equivalent of payment of rent for six (6) months.

(b) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

SECTION 29. IC 28-1-3.1-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) The receiver, with the approval of the receivership court, may appoint a successor to all rights, obligations, assets, deposits, agreements, and trusts held by the closed financial institution as trustee, administrator, executor, guardian, agent, and all other fiduciary or representative capacities. The successor's duties and obligations begin upon appointment to the same extent binding upon the closed financial institution and as though the successor had originally assumed the duties and obligations. Specifically, the successor shall succeed to and be entitled to administer all trusteeships, administrations, executorships, guardianships, agencies, and all other fiduciary or representative proceedings to which the closed financial institution is named or appointed in wills, whenever probated, or to which it is appointed by any other instrument, court order, or by operation of law.

(b) This section shall not impair any right of the grantor or beneficiaries of trust assets to secure the appointment of a substituted trustee or manager.

(c) Within thirty (30) days after appointment, the successor shall give written notice, insofar as practical, to all interested parties named in:

(1) the books and records of the closed financial institution; or

(2) trust documents held by it;

that the successor has been appointed in accordance with applicable law.

(d) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

SECTION 30. IC 28-1-3.1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. **(a)** The receiver shall cause notice to be mailed to:

(1) the owners of any personal property left in the possession of a closed financial institution for safekeeping or as bailee or depository for hire;

(2) all lessees; and

(3) other persons in possession of any safe deposit box, vault, or locker;

requiring those persons to appear and assert their claims to the property within sixty (60) days from the date of the notice. Within that time, the

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owner or owners of the property may appear and assert their claims to the property. Subject to approval of the receivership court, the receiver shall make the agreements or arrangements as may be necessary for the disposition of the property and the contents of the safe deposit boxes, vaults, or lockers and the termination of any leases or other contracts relating to the property.

(b) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

SECTION 31. IC 28-1-3.1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. **(a)** When the proceedings described in this chapter have been completed, the receiver shall execute and file, in the manner provided in this section, articles of dissolution, setting forth the following information:

(1) The name of the financial institution.

(2) The place where its principal office is located.

(3) The names and addresses of the directors and officers of the financial institution at the time when the liquidation proceedings were begun.

(4) A brief summary of the aggregate amount of general claims finally allowed against the financial institution, the aggregate amount of claims allowed as preferred, and the aggregate amount of all other claims against the financial institution, together with a statement of the aggregate payments made on each of the groups of claims and with a reference to:

(A) the orders of the receiver or the receivership court authorizing those payments; and

(B) the current reports wherein a report of the payments so ordered is made;

as of the date of the taking possession of the financial institution by the department.

(5) A brief summary of the aggregate amount of payments made to the shareholders of the financial institution, whether of money or other property, and a reference to the orders of the receiver or the receivership court authorizing the payments and to the current reports wherein the report of the payment is made.

(b) If the Federal Deposit Insurance Corporation is the receiver, the following apply:

(1) Compliance with this section is not required.

(2) The department:

(A) may file the articles of dissolution; and

(B) is authorized to take all actions necessary to complete the dissolution of the financial institution.

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SECTION 32. IC 28-1-3.1-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 21. Whenever ~~the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Resolution Trust Corporation, or~~ a federal supervisory agency is bidding, consolidating, merging, selling, or otherwise resolving or disposing of a troubled, an insolvent, or an imminently insolvent financial institution, the director of the department may approve any transaction, including the purchase of assets, the assumption of liabilities, a merger, or the formation of a new financial institution, if the transaction requires the approval of the department.

SECTION 33. IC 28-1-5-2, AS AMENDED BY P.L.57-2006, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Every corporation has the capacity to act that is possessed by a natural person, but has the authority to perform only those acts that are necessary, convenient, or expedient to accomplish the purposes for which it is formed and that are not repugnant to law.

(b) Subject to any limitations or restrictions imposed by law or by the articles of incorporation, each corporation has the following general rights, powers, and privileges:

(1) To continue as a corporation, under its corporate name, for the period limited in its articles of incorporation, or, if the period is not so limited, then perpetually.

(2) To sue and be sued in its corporate name.

(3) To have a corporate seal and to alter such seal at its pleasure.

(4) To acquire, own, hold, use, lease, mortgage, pledge, sell, convey, or otherwise dispose of property, real and personal, tangible and intangible, in the manner and to the extent hereinafter provided.

(5) To borrow money and to mortgage or pledge its property to secure the payment thereof, in the manner and to the extent hereinafter provided; but no financial institution having power to accept deposits of money shall pledge any of the assets of such financial institution as security for the safekeeping and prompt payment of any money so deposited, except that any such financial institution may, for the safekeeping and prompt payment of any money so deposited, give security of the kind authorized by any statute of this state or by the Congress of the United States. **Notwithstanding this subdivision, a financial institution may receive deposits of state and federal public funds, including the right to pledge securities or other assets for the repayment of deposits if the pledge is permitted by applicable law or**

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regulation.

(6) To conduct business in this state and elsewhere.

(7) To appoint such officers and agents as the business of the corporation may require and to do the following with respect to any officers or agents appointed:

(A) Define their duties.

(B) Fix their compensation, which may include compensation paid pursuant to any plan of deferred compensation approved by the corporation's board of directors.

(C) Enter into employment contracts with the corporation's officers and agents which set forth terms and conditions of employment.

(D) Provide the corporation's officers, agents, and employees with individual or group life insurance.

(E) Procure and maintain in effect for the benefit of the bank, insurance on the life or lives of designated officers or directors.

(8) To make bylaws for the government and regulation of its affairs.

(9) To cease doing business and to dissolve and surrender its corporate franchise.

(10) To do all acts and things necessary, convenient, or expedient to carry out the purposes for which it is formed.

(c) Subject to any limitations or restrictions that the department may impose by rule or policy, each corporation may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the corporation's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the corporation's board of directors.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

SECTION 34. IC 28-1-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) As used in this chapter, "corporation" means:

(1) a bank;

(2) a trust company;

(3) a corporate fiduciary;

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(4) a savings bank organized, reorganized, or formed as a result of a conversion after December 31, 1992;

(5) a savings association; or

(6) an industrial loan and investment company that maintains federal deposit insurance.

(b) Any two (2) or more corporations that are organized or reorganized under the laws of any state (as defined in IC 28-2-17-19) or of the United States may merge into one (1) of such corporations, or may consolidate into a new corporation, to be organized under IC 28-12, by complying with the provisions of this chapter.

(c) A savings bank organized before January 1, 1993, may under section 25 of this chapter merge, consolidate, or join together with a bank or trust company. Except as provided in section 25 of this chapter, all other provisions of this chapter apply to the merger, consolidation, or joining together.

(d) A corporation organized or reorganized under the laws of a state (as defined in IC 28-2-17-19) or of the United States may merge or consolidate with one (1) or more of its affiliates (as defined in IC 28-1-18.2-1) by complying with all the provisions of this chapter. In effecting a merger or consolidation between a corporation and an affiliate, the provisions of this chapter apply as if the affiliate were a corporation except that a non-corporation survivor of a merger or consolidation does not retain powers of the corporation.

SECTION 35. IC 28-1-9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. In case depositors or other creditors or the holders of shares of any such corporation are unknown or shall fail or refuse to accept their distributive shares in the property and assets of such corporation, or are under any disability, or can not be found after diligent inquiry, ~~the board of directors shall make a charge of not to exceed one dollar ($1.00) against each account or claim for which no demand has been made. Proceeds arising from such charges shall be merged into the general assets of the corporation.~~ upon the final settlement of the liquidation the ~~board of directors shall file at the office of the department in the state capitol building, a complete list of all distributive portions owing to depositors, creditors or owners of shares of stock, after deducting the charge above referred to, and deposit at the office of the department cash to cover such unpaid balances. Such deposit shall have the same force and effect as if payment had been made directly to and accepted by the persons lawfully entitled thereto. The distributive portions so deposited shall be paid over by the department to such depositors, creditors or~~

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~~shareholders respectively, or to the lawful owners of such distributable portions, or to their respective legal representatives upon satisfactory proof being made to the department of their respective rights thereto. If any of the distributive portions so deposited with the department shall not have been claimed within a period of three (3) years after the date of such deposit, after the expiration of said period the department shall make a charge of not to exceed one dollar ($1.00) against each of said claims remaining unpaid, as reimbursement for all costs arising in connection with the trust. The proceeds arising from such charges shall be paid into the state treasury and shall be credited to the financial institutions fund. Any balances remaining shall be paid to the general fund of the state treasury.~~ **liquidating agent shall treat the property as unclaimed property and comply with IC 32-34-1.**

SECTION 36. IC 28-1-11-3.2, AS AMENDED BY P.L.217-2007, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

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

(2) to engage in **mergers, consolidations, reorganizations, or** other activities **or to exercise other powers** authorized for;

national banks domiciled in Indiana.

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

(1) granted to national banks; but

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

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

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

(d) The department may deny the requested rights and privileges if

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the department finds that:

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

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

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

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

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

(1) the department must:

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

(B) convene a hearing;

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

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

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

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

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

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

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matter de novo.

SECTION 37. IC 28-1-29-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **(a) This chapter does not apply to an attorney at law authorized to practice in this state or to a depository financial institution (as defined in IC 28-1-1-6).**

(b) This chapter does not apply to a third-party bill paying service with which the customer contracts solely for the customer's convenience of paying routine bills, in an arrangement in which the customer retains full control over all funds deposited. The types of payments made by a bill paying service are exempt from this chapter as long as the company's actions are not an attempt, as determined by the director, to circumvent limitations under this chapter.

SECTION 38. IC 28-1-29-1, AS AMENDED BY P.L.90-2008, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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, limited liability companies, trusts, joint ventures, corporations, unincorporated organizations, ~~and~~ other entities, **and their affiliates,** however organized.

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

(A) ~~An entity~~ **A person** that simply holds any **money, funds,** 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.

(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~~ **written agreement** with a licensee.

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(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.

(10) "Affiliate" means a person that, directly or indirectly, through one (1) or more intermediaries:

(A) controls;

(B) is controlled by; or

(C) is under common control with;

a person subject to this chapter.

(11) "Fee" means the total amount of money charged to a contract debtor by a debt management company for the administration of a debt management plan.

(12) "Plan" means a written debt repayment program in which a debt management company furnishes debt management services to a contract debtor and that includes a schedule of payments to be made by or on behalf of the contract debtor and used to pay debts owed by the contract debtor.

(13) "Principal amount of the debt" means the total amount of a debt at the time the contract debtor enters into an agreement.

(14) "Agreement" means an agreement between a debt management company and a debtor for the performance of debt management services.

(15) "Trust account" means an account held by a licensee that is:

(A) established in a bank insured by the Federal Deposit Insurance Corporation;

(B) separate from other accounts held by the licensee;

(C) designated as a trust account or other account

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designated to indicate that the money in the account is not the money of the licensee; and

(D) used to hold money of one (1) or more contract debtors for disbursement to creditors of the contract debtors.

(16) "Month" means a calendar month.

(17) "Day" means calendar day.

(18) "Concessions" means assent to repayment of a debt on terms more favorable to a contract debtor than the terms of the contract between the debtor and a creditor.

(19) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(20) "Control of a related interest" refers to a situation in which a person, directly or indirectly, or through or in concert with one (1) or more other persons, 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 a related interest.

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

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

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

(ii) directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

SECTION 39. IC 28-1-29-3, AS AMENDED BY P.L.90-2008, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) No person shall operate a 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

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located in Indiana; or

(2) the person:

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

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

(i) Mail.

(ii) Personal delivery.

(iii) Telephone.

(iv) Radio.

(v) Television.

(vi) The Internet or other electronic communications.

(vii) Any other means of communication.

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

(1) the time of application;

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

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

(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. The department may impose a fee under IC 28-11-3-5 for each day that a renewal fee ~~due and payable under this subsection is~~ **and any related documents that**

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are required to be submitted with the renewal are delinquent.

(e) If a person knowingly acts as a 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:

(1) is not assignable or transferable; **and**

(2) must be renewed every year in the manner prescribed by the director of the department.

The director of the department shall prescribe the form of the renewal application. In order to be accepted for processing, a renewal application must be accompanied by the license renewal fee imposed under subsection (d) and all information and documents requested by the director of the department.

SECTION 40. IC 28-1-29-4, AS AMENDED BY P.L.217-2007, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The department may revoke or suspend any license issued under this chapter for the following causes:

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

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

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

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

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

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

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

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

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

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remuneration.

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

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

(12) Engaging in an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(13) Providing a debtor less than the full benefit of a compromise of a debt arranged by the licensee.

(14) Furnishing legal advice or performing legal services, unless the person furnishing the advice or performing the services:

(A) is licensed to practice law; and

(B) has been engaged by a debtor to provide legal services to the debtor.

(15) A fact or condition exists that, if the fact or condition had existed when the licensee applied for licensure as a debt management company, would have been a reason for denying the license.

(b) Except as provided in section 4.1 of this chapter, the denial, revocation, or suspension shall be made only after specific charges have been filed in writing, under oath, with the department or by the department, whereupon a hearing shall be had as to the reasons for such denial, revocation, or suspension and a certified copy of the charges shall be served on the licensee or the applicant for license not less than ten (10) days prior to the hearing.

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

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

(e) If the director of the department:

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

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

the director may proceed with the revocation of the license under

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IC 4-21.5-3-6.

SECTION 41. IC 28-1-29-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4.1. (a) A license issued by the department under this chapter shall be revoked by the department if the person fails to:

(1) file any renewal ~~form required~~ **application prescribed** by the ~~department;~~ **director;** or

(2) pay any license renewal fee described under section 3 of this chapter;

~~for a period of at least two (2) years.~~ **within sixty (60) days after the date the renewal is due.**

(b) A person whose license is revoked under this section may:

(1) pay all delinquent fees and apply for a new license; or

(2) appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

SECTION 42. IC 28-1-29-5, AS AMENDED BY P.L.90-2008, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Every person doing business as a debt management company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the department and shall contain such information as the department may require.

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

(1) the applicant and 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;

warrant belief that the business will be operated honestly and fairly under this ~~article.~~ **chapter.** 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 any 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; or

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(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 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 43. IC 28-1-29-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Each application for a license shall be accompanied by **proof that the applicant has executed** a bond, **payable** to the state of Indiana, ~~in the sum of twenty-five thousand dollars ($25,000) with surety to the satisfaction of the department and be approved as to form by the state's attorney general, conditioned upon the faithful performance of the rules and regulations of the department and in compliance with the laws of the state of Indiana.~~ **in an amount determined by the director and in accordance with the standards adopted by the director.** Said bond shall also indemnify any person damaged by failure on the part of the licensee to conduct the business in accordance with the provisions of this chapter.

SECTION 44. IC 28-1-29-7.5, AS AMENDED BY P.L.90-2008, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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 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 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

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(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.

(c) Not later than thirty (30) days after a licensee has been served with notice of a civil action for violation of this chapter by or on behalf of a debtor who resides or resided in this state on:

(1) the date an agreement that is the subject of the civil action was entered into; or

(2) the date the civil action is filed;

the licensee shall provide written notice of the civil action to the department.

SECTION 45. IC 28-1-29-7.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7.7. (a) Before providing debt management services to a debtor, a licensee shall give the debtor an itemized list of goods and services the licensee offers and the charges for each of the goods and services. The list must be clear and conspicuous and be provided in a form the debtor may keep whether or not the debtor enters into an agreement. The licensee must specify in the list the goods and services that are provided:**

(1) free of additional charge if the debtor enters into an agreement with the licensee;

(2) for a charge if the debtor does not enter into an agreement with the licensee; or

(3) for a charge if the debtor enters into an agreement with the licensee that provides, in 14 point bold type, language in the following form:

Set-up fee_____

dollar amount of fee

Monthly service fee

_____

dollar amount of fee or method of determining amount

Goods and services in addition to the goods and services provided in connection with a plan:

_____ _____

(item) dollar amount or method of determining amount

_____ _____

(item) dollar amount or method of determining amount

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(b) A licensee may not furnish debt management services to a debtor unless:

(1) the licensee has prepared a financial analysis; and

(2) if the debtor is to make regular, periodic payments, the licensee:

(A) has prepared a plan for the debtor;

(B) has made a determination, based on the licensee's analysis of the information provided by the debtor and otherwise available to the licensee, that the plan is suitable for the debtor and the debtor will be able to meet the payment obligations under the plan; and

(C) believes that each creditor of the debtor listed as a participating creditor in the plan will accept payment of the debtor's debts as provided in the plan.

(c) Before a debtor enters into an agreement with a licensee to engage in a plan, the licensee shall:

(1) provide the debtor with a copy of the analysis and plan required by subsection (b) in a form that identifies the licensee and that the debtor may keep whether or not the debtor enters into the agreement;

(2) inform the debtor of the availability, at the debtor's option, of assistance provided through a toll free communication system or in person regarding the financial analysis and plan required by subsection (b); and

(3) with respect to all creditors identified by the debtor or otherwise known by the licensee to be creditors of the debtor, provide the debtor with a list of:

(A) creditors that the licensee expects to participate in the plan and grant concessions;

(B) creditors that the licensee expects to participate in the plan but not grant concessions;

(C) creditors that the licensee expects not to participate in the plan; and

(D) all other creditors.

(d) Except as provided in subsections (e), (f), and (g), before a debtor enters into an agreement with a licensee, the licensee shall, in a written form that is provided to the debtor separately, that contains no other information, and that the debtor may keep whether or not the debtor enters into the agreement, provide the following information to the debtor:

(1) The licensee's name and business address of the licensee.

(2) A statement that:

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(A) the licensee's plans are not suitable for all debtors and the debtor may ask the licensee about other ways, including bankruptcy, to deal with indebtedness;

(B) the establishment of a plan may adversely affect the debtor's ability to obtain credit;

(C) nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(D) unless the statement would be untrue, the licensee may receive compensation from the creditors of the debtor; and

(E) unless the debtor is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the debtor, even though the debtor does not receive any money.

(e) If a licensee may receive payments from a debtor's creditors and the plan contemplates that the debtor's creditors will reduce finance charges or fees for late payment, default, or delinquency, the licensee may comply with subsection (d) by providing the following disclosure in 14 point bold type, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt management plan may make it harder for you to obtain credit.

(3) We may receive compensation for our services from your creditors.

_____

Name and business address of licensee

(f) If a licensee will not receive payments from a debtor's creditors and the plan contemplates that the debtor's creditors will reduce finance charges or fees for late payment, default, or delinquency, a licensee may comply with subsection (d) by providing the following disclosure in 14 point bold type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt management plan may make it harder for you to obtain credit.

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_____

Name and business address of licensee"

(g) If an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, a licensee may comply with subsection (d) by providing the following disclosure in 14 point bold type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.

(2) Nonpayment of your debts under our program may:

(A) hurt your ability to obtain credit;

(B) lead your creditors to increase finance and other charges; and

(C) lead your creditors to undertake activity, including lawsuits, to collect the debts.

(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

_____

Name and business address of licensee"

SECTION 46. IC 28-1-29-8, AS AMENDED BY P.L.90-2008, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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;~~

~~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.~~

(a) An agreement between a licensee and a debtor must:

(1) be in a written form;

(2) be dated and signed by the licensee and the debtor;

(3) include the name of the debtor and the address where the

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debtor resides;

(4) include the name, business address, and telephone number of the licensee;

(5) be delivered to the debtor immediately upon formation of the agreement; and

(6) disclose the following:

(A) The services to be provided.

(B) The amount or method of determining the amount of all fees, individually itemized, to be paid by the debtor.

(C) The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment.

(D) If a plan provides for regular periodic payments to creditors:

(i) each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the licensee reasonably believes each creditor will offer; and

(ii) the schedule of expected payments to each creditor, including the amount of each payment and the date on which the payment will be made.

(E) Each creditor that the licensee believes will not participate in the plan and to which the licensee will not direct payment.

(F) The manner in which the licensee will comply with the licensee's obligations under section 9(j) of this chapter.

(G) A statement that:

(i) the licensee may terminate the agreement for good cause, upon return of unexpended money of the debtor;

(ii) the debtor may cancel the agreement as provided in section 8.6 of this chapter; and

(iii) the debtor may contact the department with any questions or complaints regarding the licensee.

(H) The address, telephone number, and Internet address or website of the department.

(b) For purposes of subsection (a)(5), delivery of an electronic record occurs when:

(1) the record is made available in a format in which the debtor may retrieve, save, and print the record; and

(2) the debtor is notified that the record is available.

(c) An agreement must provide that:

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(1) the debtor has a right to terminate the agreement at any time without penalty, notwithstanding the close-out fee as permitted by section 8.3(d) of this chapter, or obligation, by giving the licensee written or electronic notice, in which event:

(A) the licensee shall refund all unexpended money that the licensee or the licensee's agent has received from or on behalf of the debtor for the reduction or satisfaction of the debtor's debt; and

(B) all powers of attorney granted by the debtor to the licensee are revoked and ineffective;

(2) the debtor authorizes any bank insured by the federal deposit insurance corporation in which the licensee or the licensee's agent has established a trust account to disclose to the department any financial records relating to the trust account;

(3) the licensee shall notify the debtor within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan under the agreement; and

(4) the notice under subdivision (3) must include:

(A) the identity of the creditor; and

(B) the right of the debtor to modify or terminate the agreement.

~~(b)~~ **(d)** ~~A 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)~~ **(e)** 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)~~ **(f)** A licensee shall, upon cancellation by a contract debtor of the ~~contract,~~ **agreement,** notify immediately in writing all creditors of **the** 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~~

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~~(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:~~

~~(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)~~ **(g)** A licensee may not enter into ~~a contract~~ **an agreement** 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.~~ **plan.**

~~(i)~~ **(h)** A licensee may not enter into ~~a contract~~ **an agreement** with a contract debtor for a period longer than ~~twenty-four (24)~~ **sixty (60)** months. **Every twenty-four (24) months, the licensee shall complete a thorough, written budget analysis of the debtor to ensure the debt management plan is still suitable for the debtor and the debtor will be able to meet the payment obligations under the plan. When adjustments are needed to change the indebtedness listed in the agreement, the licensee may execute a new agreement using the revised figures.**

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

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

(1) the operation of the other business; or

(2) the sale of other products and services;

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

~~(k)~~ **(j)** 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.~~

(k) A licensee shall maintain a toll-free communication system, staffed at a level that reasonably permits a contract debtor to speak to a counselor, debt specialist, or customer service representative, as appropriate, during ordinary business hours.

(l) A debt management company shall act in good faith in all matters under this chapter.

SECTION 47. IC 28-1-29-8.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.3. (a) Except as otherwise permitted by this section, a licensee may not:**

(1) impose, directly or indirectly, a fee or other charge on a debtor; or

(2) receive money from or on behalf of a debtor for debt management services.

(b) A licensee may not impose charges or receive payment for debt management services until the licensee and the debtor have agreed upon a plan and have signed an agreement that complies with sections 8, 8.6, and 9.5 of this chapter. All creditors must be notified of the debtor's and licensee's relationship.

(c) If a debtor assents to a plan, the licensee may charge the following:

(1) A set up fee of not more than fifty dollars ($50) for consultation, obtaining a credit report, and setting up an account. Unless fifty-one percent (51%) or more, in number and dollar amount of debt owed, of all the debtor's creditors

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consent to the debt management plan within forty-five (45) days of establishing the debt management plan, the fee shall be returned to the debtor and the debtor's account closed. Acceptance of a plan payment constitutes agreement by the creditor to the plan.

(2) A monthly service fee of the lesser of:

(A) not more than fifteen percent (15%) of the monthly payment disbursed to creditors; or

(B) not more than seventy-five dollars ($75) in any month.

The fee under this subdivision may be charged for any one (1) month or part of a month.

(d) Upon cancellation by a contract debtor or termination of payments by a contract debtor, a licensee may not withhold for the licensee's own benefit more than one hundred dollars ($100), which may be accrued as a close-out fee.

(e) A licensee may not charge a contract debtor more than one (1) set up fee or one (1) cancellation fee unless the contract debtor leaves the services of the licensee for more than six (6) months.

(f) With respect to any additional charge not specifically provided for in this section, the licensee must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the contract debtor. Supporting documents may be required by the department. The department shall determine whether the charge:

(1) would be of benefit to the consumer; and

(2) is reasonable in relation to the benefits.

An additional charge is not permitted unless approved by the department.

(g) For purposes of this chapter, the terms of an agreement commence on the date on which the agreement is made.

(h) A licensee may assess a charge of not more than 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.

(i) Any fee charged by the licensee to the debtor under this section for services rendered by the licensee, other than the fees described under subsection (e), is not considered a debt owed by the debtor to the licensee.

SECTION 48. IC 28-1-29-8.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.6. (a) A debtor may cancel an agreement before midnight of the third business day after the**

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debtor enters into the agreement unless the agreement does not comply with subsection (b) or sections 8 or 9.5 of this chapter, in which event the debtor may cancel the agreement at any time after the debtor enters into the agreement and all fees paid by the debtor shall be refunded to the debtor. To exercise the right to cancel, the debtor must give written notice to the licensee. Notice by mail is given when mailed.

(b) An agreement must be accompanied by a form that contains in 14 point bold type, surrounded by bold black lines:

"NOTICE OF RIGHT TO CANCEL

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an electronic mail message to

_____ or mail or deliver a signed,

Electronic mail address of licensee

dated copy of this notice, or any other written notice to

_____

Name of licensee

at _____ before midnight on

Address of licensee

_____.

Date

If you cancel this agreement within the 3 day period, we will refund all the money you have already paid us.

You also may terminate this agreement at any later time, but we may not be required to refund fees you have paid us.

I cancel this agreement,

_____

Print your name

_____

Signature

_____

Date"

(c) If a personal financial emergency necessitates the disbursement of a debtor's money to one (1) or more of the debtor's creditors before the expiration of the third business day after the date an agreement is signed, a debtor may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the debtor's own words describing the

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circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard form record is void.

SECTION 49. IC 28-1-29-8.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.8. (a) If a debtor fails to make a payment to a licensee within sixty (60) days after the date a payment is due under an agreement, the agreement is considered canceled by the debtor. A debtor may file a letter of continuation of an agreement even if the debtor did not make a payment within sixty (60) days after a payment was due. All of the following apply to a letter of continuation of an agreement:**

(1) A debtor may file only one (1) letter of continuation with a licensee for any agreement.

(2) A letter of continuation must contain a detailed explanation of the reason or reasons for the missed payment.

(3) If an agreement for which a letter of continuation that meets the requirements of this subsection is filed, the agreement remains in effect and subject to cancellation for any future failure to make a payment as described in this subsection.

(4) An agreement between a licensee and a debtor shall clearly provide for one (1) letter of continuation by a debtor.

(5) A debtor may not file a letter of continuation with a licensee at the beginning of an agreement.

(b) If a licensee or a debtor terminates an agreement, the licensee shall immediately return to the debtor any money of the debtor held in trust for the benefit of the debtor.

SECTION 50. IC 28-1-29-9, AS AMENDED BY P.L.217-2007, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. ~~(a) All funds received by a licensee or the licensee's agent from and for the purpose of paying bills, invoices, or accounts of a debtor constitute trust funds owned by and belonging to the person from whom they were received. All such funds received by a licensee shall be separated from the funds of the licensee not later than the end of the same business day following receipt by the licensee. All such funds shall thereafter be kept separate and apart at all times from funds belonging to the licensee or any of its officers, employees, or agents and may be used for no purpose other than paying bills, invoices, or accounts of said persons. All such trust funds received at the main or branch offices of a licensee shall be deposited in a bank or banks in an account or accounts in the name of the licensee designated~~

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~~"trust account", or by some other appropriate name indicating that the funds are not the funds of the licensee or its officers, employees, or agents, on or before the close of the same banking day following receipt.~~

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

~~(c) Each licensee shall make remittances within thirty (30) days after initial receipt of funds, and thereafter remittances shall be made within fifteen (15) days of receipt, less fees and costs, unless the reasonable payment of one (1) or more of the debtor's obligations requires that the funds be held for a longer period so as to accumulate a sum certain. For the purpose of this section, the cancellation fee set forth in section 8(g) of this chapter shall not be deemed an obligation of the debtor.~~

(a) All money paid to a licensee by or on behalf of a debtor for distribution to creditors under a plan is held in trust. On or before the close of the same banking day following receipt, the licensee shall deposit the money in a trust account established for the benefit of the debtor to whom the licensee is furnishing debt management services.

(b) A licensee shall do the following:

(1) Maintain separate records of account for each individual to whom the licensee is furnishing debt management services.

(2) Disburse money paid by or on behalf of the debtor to creditors of the debtor as disclosed in the agreement.

(3) Make remittances not later than thirty (30) days after initial receipt of funds. After the initial receipt of funds, remittances shall be made not later than fifteen (15) days after receipt of funds, less fees and costs, unless the reasonable payment of one (1) or more of the debtor's obligations requires that the funds be held for a longer period to accumulate a sum certain. For the purpose of this section, the close-out fee set forth in section 8.3(d) of this chapter shall not be considered an obligation of the debtor.

(4) Retain in the debtor's trust account, for charges, an amount less than or equal to one (1) month's fee as permitted by section 8.3(c)(2) of this chapter plus the close-out fee as permitted by section 8.3(d) of this chapter, unless a greater

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amount is approved in writing by the department.

(5) Promptly:

(A) correct any payments that are not made or that are misdirected as a result of an error by the licensee or other person in control of the trust account; and

(B) reimburse the debtor for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(c) A licensee may not commingle money in a trust account established for the benefit of debtors to whom the licensee is furnishing debt management services with money of other persons.

(d) A trust account must at all times have a cash balance equal to the sum of the balances of each debtor's account.

(e) If a licensee has established a trust account under subsection (a), the licensee shall reconcile the trust account at least once a month. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each debtor's account. If the licensee or the licensee's designee has more than one (1) trust account, each trust account must be individually reconciled.

(f) If a licensee discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the licensee shall:

(1) immediately notify the department in writing; and

(2) unless the department by rule provides otherwise, give notice to the department describing the remedial action taken or to be taken not later than five (5) days after the licensee discovers, or has a reasonable suspicion of, the embezzlement or other unlawful appropriation.

(g) If a debtor terminates an agreement or it becomes reasonably apparent to a licensee that a plan has failed, the licensee shall promptly refund to the debtor all money paid by or on behalf of the debtor that has not been paid to creditors less fees that are payable to the licensee under section 8.3(e) of this chapter.

(h) Before relocating a trust account from one (1) bank to another, a licensee shall inform the department of the name, business address, and telephone number of the new bank. As soon as practicable, the licensee shall inform the department of the account number of the trust account at the new bank.

~~(d)~~ **(i)** At least once every three (3) months the licensee shall render an accounting to the debtor which must itemize the total amount received from the debtor, the total amount paid each creditor, the amount of charges deducted, the amount of fair share fees received **or**

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withheld by the licensee from each of the contract debtor's creditors, and any amount held in reserve. A licensee shall, in addition thereto, render such an accounting to a debtor within seven (7) days after written demand, but not more than three (3) per six (6) month period.

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

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

(2) listing the name and address of:

(A) each creditor paid in full; and

(B) any creditors remaining unpaid.

SECTION 51. IC 28-1-29-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9.5. (a) A licensee may not, directly or indirectly, do any of the following:**

(1) Misappropriate or misapply money held in trust.

(2) Exercise or attempt to exercise a power of attorney after a debtor has terminated an agreement.

(3) Initiate a transfer from a debtor's account at a bank or with another person unless the transfer is:

(A) a return of money to the debtor; or

(B) before the termination of an agreement, properly authorized by the agreement and this chapter, and for:

(i) payment to one (1) or more creditors under an agreement; or

(ii) payment of a fee.

(4) Offer a gift or bonus, premium, reward, or other compensation to a debtor for executing an agreement.

(5) Offer, pay, or give:

(A) a gift or bonus;

(B) a premium;

(C) a reward; or

(D) other compensation;

to a person for referring a prospective customer if the person making the referral has a financial interest in the outcome of debt management services provided to the customer.

(6) Receive a bonus, a commission, or other benefit for referring a debtor to a person.

(7) Structure a plan in a manner that would result in a negative amortization of any of a debtor's debts, unless a creditor that is owed a negatively amortizing debt agrees to

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refund or waive the finance charge upon payment of the principal amount of the debt.

(8) Compensate the licensee's employees on the basis of a formula that incorporates the number of debtors the employee induces to enter into agreements.

(9) Settle a debt or lead a debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the debtor receives a certification by the creditor that the payment is in full settlement of the debt.

(10) Make a representation that:

(A) the licensee will furnish money to pay bills or prevent attachments;

(B) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(C) participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.

(11) Misrepresent that the licensee is authorized or competent to furnish legal advice or perform legal services.

(12) Represent in the licensee's agreements, disclosures required by this chapter, advertisements, or Internet web site that the licensee is:

(A) a nonprofit entity unless the licensee is organized and properly operating as a nonprofit entity under the law of the state in which entity was formed; or

(B) a tax exempt entity unless the entity has received certification of tax exempt status from the Internal Revenue Service and is properly operating as a nonprofit entity under the law of the state in which the entity was formed.

(13) Take a confession of judgment or power of attorney to confess judgment against a debtor.

(14) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(b) If a licensee furnishes debt management services to a debtor, the licensee may not, directly or indirectly, do any of the following:

(1) Purchase a debt or obligation of the debtor.

(2) Receive from or on behalf of the debtor:

(A) a promissory note or other negotiable instrument other than a check or a demand draft; or

(B) a post-dated check or demand draft.

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(3) Lend money or provide credit to the debtor.

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the debtor.

(5) Except as permitted by federal law, disclose the identity or identifying information of the debtor or the identity of the debtor's creditors, except:

(A) to the department, upon proper demand;

(B) to a creditor of the debtor, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) to the extent necessary to administer the plan.

(6) Charge the debtor for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services concerning personal finance.

(7) Furnish legal advice or perform legal services unless the person furnishing the advice or performing the services is licensed to practice law.

(c) This chapter does not authorize any person to engage in the practice of law.

(d) A licensee may not receive a gift, bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting a debtor in connection with obtaining an extension of credit or other service from a lender or service provider.

SECTION 52. IC 28-1-29-9.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9.7. (a) If:**

(1) an agreement of a licensee contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency; and

(2) the licensee advertises debt management services;

the licensee shall disclose, in an easily comprehensible manner, that using a debt management plan may make it harder for the individual to obtain credit.

(b) If:

(1) an agreement of a licensee contemplates that creditors will settle for less than the full principal amount of debt; and

(2) the licensee advertises debt management services;

the licensee shall disclose, in an easily comprehensible manner, the information specified in section 7.7(d)(2)(B) and 7.7(d)(2)(C) of this chapter.

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(c) The licensee:

(1) may not use false, misleading, or deceptive advertising; and

(2) shall meet the following conditions in advertising:

(A) An advertisement may not include a statement that states or implies that no financial problem is too great for the licensee to solve.

(B) An advertisement may not include a statement that states or implies that the licensee will use the licensee's own cash to pay the debtor's accounts.

(C) All advertisements must contain the statement "We do not lend money.".

(D) All advertisements must contain the true name and address of the licensee.

SECTION 53. IC 28-1-29-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.5. (a) A licensee shall maintain in the licensee's business any books, accounts, and records that enable the department to determine whether the licensee is complying with this chapter. The books, accounts, and records shall be preserved for at least two (2) years after making the final entry of any agreement recorded in the books, accounts, and records. A licensee is subject to IC 28-1-2-30.5 with respect to any records maintained by the licensee.**

(b) In administering this chapter and in order to determine whether this chapter is being complied with by a person engaging in acts subject to this chapter, the department may examine the records of a person and may make investigations of a person as necessary to determine compliance. Records subject to examination under this section include the following:

(1) Training, operating, and policy manuals.

(2) Minutes of:

(A) management meetings; and

(B) other meetings.

(3) Other records that the department determines are necessary to perform the department's investigation or examination.

(c) The department may also administer oaths or affirmations, subpoena witnesses, compel a witness's attendance, adduce evidence, and require the production of any matter that is relevant to the investigation. The department shall determine whether:

(1) the records maintained are sufficient; and

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(2) the person has made the required information reasonably available.

(d) If the department:

(1) investigates; or

(2) examines the books and records of;

a person that is subject to this chapter, the person shall pay all reasonably incurred costs of the investigation or examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5. Any costs required to be paid under this subsection shall be paid not later than sixty (60) days after the person receives a notice from the department of the costs being assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day that the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.

(e) The department shall be given free access to the records wherever located. If the person's records are located outside Indiana, at the discretion of the director, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where the records are maintained.

(f) If a person fails to:

(1) obey a subpoena without a lawful excuse; or

(2) give testimony;

the department may apply to a civil court for an order compelling compliance.

(g) The department shall not make public the name or identity of a person whose acts or conduct the department investigates under this section or the facts disclosed in the investigation. However, this subsection does not apply to disclosures of enforcement proceedings under this chapter.

(h) The department may:

(1) enter into a cooperative arrangement with another federal or state agency having authority over providers; and

(2) exchange with the agency information about a person subject to this chapter, including information obtained during an examination of the licensee.

SECTION 54. IC 28-1-29-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. **(a) The department may enforce this chapter and rules adopted under this chapter by taking one (1) or more of the following actions:**

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(1) Order a debt management company or a director, employee, or other agent of a debt management company to cease and desist from any violations.

(2) Order a debt management company or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation.

(3) Impose on a debt management company or a person that causes a violation of this chapter a civil penalty of not more than ten thousand dollars ($10,000) for each violation.

(4) Prosecute a civil action to:

(A) enforce an order; and

(B) obtain restitution, an injunction, or other equitable relief; or

(C) accomplish both clauses (A) and (B).

(b) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (a)(2), the department may impose a civil penalty of not more than twenty thousand dollars ($20,000) for each violation.

(c) The department may maintain an action in any county to enforce this chapter.

(d) The department may recover the reasonable costs of enforcing this chapter under subsections (a) through (c), including attorney's fees.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b), the department shall consider:

(1) the seriousness of the violation;

(2) the good faith of the person who violated this chapter;

(3) any previous violations by the person who violated this chapter;

(4) the deleterious effect of the violation on the public;

(5) the net worth of the person who violated this chapter; and

(6) any other factor the department considers relevant to the determination of a civil penalty.

(f) In addition to the revocation provision of section 4 of this chapter, a person who violates section 3, 5, 6, 8, ~~or~~ **8.3,** 9, **or 9.5** of this chapter commits a Class A misdemeanor, and the license of the licensee shall be revoked on the date of the conviction of an offense.

SECTION 55. IC 28-1-29-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. Any applicant for a license aggrieved by a decision of the department pursuant to this chapter may file a petition for review as prescribed in IC 4-21.5.

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Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County, Indiana, at a location designated by the director.

SECTION 56. IC 28-1-29-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 15. (a) As used in this section, "federal act" means the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq., as amended).**

(b) As used in this section, "consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(c) A licensee may satisfy the requirements of section 7.7, 8, or 9 of this chapter by means of the Internet or other electronic means if the licensee obtains a consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

(d) The disclosures and materials required by section 7.7, 8, or 9 of this chapter shall be presented in a form that is capable of being accurately reproduced for later reference.

(e) With respect to disclosure by means of an Internet web site, the disclosure of the information required by section 7.7 of this chapter must appear on one (1) or more screens that:

(1) contain no other information; and

(2) the debtor must see before proceeding to assent to formation of an agreement.

(f) At the time of providing the materials and agreement required by sections 7.7, 8, and 9 of this chapter, a licensee shall inform the debtor that upon electronic, telephonic, or written request, the licensee shall:

(1) send the debtor a written copy of the materials; and

(2) comply with a request as provided in subsection (g).

(g) If a licensee is requested, after an agreement is completed or terminated, to send a written copy of the materials required by section 7.7, 8, or 9 of this chapter, the licensee shall send the materials at no charge to the debtor not later than three (3) business days after the request. However, the licensee is not required to comply with a request more than once per calendar month or if the licensee reasonably believes the request is made for purposes of harassment.

(h) A licensee that maintains an Internet web site shall disclose on the home page of the licensee's web site or on a page that is

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clearly and conspicuously connected to the home page by a link that clearly reveals the following:

(1) The licensee's name and all names under which the licensee does business.

(2) The licensee's principal business address, telephone number, and electronic mail address, if any.

(3) The names of the licensee's principal officers.

(i) A licensee may not terminate the licensee's agreement because a consumer who has consented to electronic communication in the manner provided by Section 101 of the federal act withdraws consent as provided in the federal act.

SECTION 57. IC 28-1-29-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 16. Unless the department provides otherwise in a rule, the disclosures and documents required by this chapter must be in English. If a licensee communicates with a debtor primarily in a language other than English, the licensee shall furnish a translation of the disclosures and documents required by this chapter from the other language into English.**

SECTION 58. IC 28-1-29-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 17. Unless a fee is specifically authorized under the chapter, a licensee may not solicit or accept a voluntary contribution from a contract debtor for any service provided to the contract debtor.**

SECTION 59. IC 28-1-29-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 18. If a licensee delegates any of the licensee's duties or obligations under an agreement or this chapter to another person, including an independent contractor, the licensee is liable for conduct of the person which, if done by the licensee, would violate the agreement or this chapter.**

SECTION 60. IC 28-2-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. As used in this chapter, "branch" means any office, agency, mobile unit, messenger service, or other place of business at which deposits are received, checks paid, or money lent. However, the term does not include:

(1) the principal office of a bank;

(2) the principal office of an affiliate;

(3) a branch of an affiliate;

(4) an automated teller machine;

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(5) a night depository; ~~or~~

(6) a temporary facility authorized in IC 28-2-13-22.5;

(7) a loan production office;

(8) a deposit production office; or

(9) other service delivery mechanisms not considered by the director to be a branch.

SECTION 61. IC 28-2-13-20.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20.5. Notwithstanding any other provision of this title, upon receipt of approval by the department and all required federal regulatory approvals, a state bank is entitled to establish a branch through a transaction with a savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)), if the transaction

~~(1) is permissible under Section 5(d)(2)(C) or 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(C) and 12 U.S.C. 1815(d)(3), respectively); and~~

~~(2)~~ otherwise complies with this chapter.

SECTION 62. IC 28-5-1-6.3, AS AMENDED BY P.L.217-2007, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.3. (a) As used in this section, "rights and privileges" means the power:

(1) to:

~~(1)~~ **(A)** create;

~~(2)~~ **(B)** deliver;

~~(3)~~ **(C)** acquire; or

~~(4)~~ **(D)** sell;

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

(2) to engage in mergers, consolidations, reorganizations, or other activities or to exercise other powers authorized for;

national banks domiciled in Indiana.

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

(1) granted to national banks; but

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

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

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

(d) The department may deny the requested rights and privileges if the department finds that:

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

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

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

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

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

(1) the department must:

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

(B) convene a hearing;

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

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

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

(g) If a company receives approval to exercise the requested rights and privileges granted to national banks domiciled in Indiana, the department shall determine by order whether all industrial loan and investment companies may exercise the same rights and privileges. In

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making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all industrial loan and investment companies will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

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

SECTION 63. IC 28-6.1-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) A savings bank may receive deposits of state and federal public funds:

(1) on the same terms and conditions;

(2) with the same rights and privileges; and

(3) subject to the same duties and obligations;

as provided by law for banks of discount and deposit, trust companies, and other financial institutions.

(b) The power under subsection (a) includes the right to pledge securities or other assets for the repayment of the deposits if the pledge is ~~required~~ **permitted** by **applicable** law or ~~applicable~~ regulation.

SECTION 64. IC 28-6.1-6-24, AS AMENDED BY P.L.217-2007, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. (a) As used in this section, "rights and privileges" means the power:

(1) to:

~~(1)~~ **(A)** create;

~~(2)~~ **(B)** deliver;

~~(3)~~ **(C)** acquire; or

~~(4)~~ **(D)** sell;

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

(2) to engage in mergers, consolidations, reorganizations, or other activities or to exercise other powers authorized for;

national banks domiciled in Indiana.

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

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

(1) granted to national banks; but

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

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

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

(e) The department may deny the requested rights and privileges if the department finds that:

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

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

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

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

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

(1) the department must:

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

(B) convene a hearing;

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

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

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

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

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

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

SECTION 65. IC 28-7-1-0.5, AS AMENDED BY P.L.90-2008, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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.

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(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 **(as defined and formed under Part 712 of the rules and regulations of the National Credit Union Administration, 12 CFR 712)** in which the credit union has invested under section ~~9(3)(J)~~ **9(a)(4)** of this 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

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this clause, an individual is presumed to have control, including the power to exercise a controlling influence over the management or policies of a related interest, if the individual:

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

(ii) directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(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 **is not solely a director or committee member and** 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)~~ **section 9(a)(4)** of this chapter, "capital and surplus" means the sum of:

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(A) undivided profits;
(B) reserve for contingencies;
(C) regular reserve; and
(D) allowance for loan and lease losses.

SECTION 66. IC 28-7-1-9, AS AMENDED BY P.L.90-2008, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. **(a)** A credit union has the following powers:

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

(2) To make loans to officers, directors, or committee members under ~~section~~ **sections** 17.1 **and 17.2** 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~~

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~~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.~~

(I) Shares or certificates of an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 15 U.S.C. 80a-3 and 15 U.S.C. 80a-4 through 15 U.S.C. 80a-64), if all of the following conditions are met:

(i) The fund's assets consist of and are limited to securities in which a credit union may invest directly.

(ii) The credit union has an equitable and undivided interest in the underlying assets of the fund.

(iii) The credit union is not liable for acts or obligations of the fund.

(iv) The credit union's investment in any one (1) fund does not exceed fifteen percent (15%) of the amount of the credit union's net worth.

~~(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 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 capital and surplus and unimpaired shares with the prior approval of the department.~~

~~(K)~~ **(J)** For a credit union that is well capitalized (as defined in ~~Section~~ **Part** 702 of the Rules and Regulations of the National Credit Union Administration, **12 CFR 702),** investment securities, as may be defined by **a statute or** 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 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

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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. **If a credit union possesses stock or another equity investment as a result of a loan default, the credit union shall dispose of the investment within a reasonable period that does not exceed one (1) year or a longer period if approved by the department.**

(vii) Subject to items (i) through (iv), a credit union may purchase yankee dollar deposits, eurodollar deposits, banker's acceptances, deposit notes, bank notes with original weighted average maturities of less than five (5) years, and investments in obligations of, or issued by, any state or political subdivision (including any agency, corporation, or instrumentality of a state or political subdivision).

~~(L)~~ **(K)** Collateralized obligations that are eligible for purchase and sale by federal credit unions. However, a credit union may purchase for its own account and sell the obligations only to the extent that a federal credit union can purchase and sell those obligations.

(4) With the prior approval of the department, and subject to the limitations of this subsection, a credit union may organize, invest in, or loan money to a credit union service organization

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(as defined in Part 712 of the rules and regulations of the National Credit Union Administration, 12 CFR 712). A credit union may not loan or invest in a credit union service organization if the aggregate amount of all such loans or investments in a particular credit union service organization is greater than ten percent (10%) of the capital, surplus, and unimpaired shares of the credit union without the prior written approval of the department. A credit union may organize, invest in, or loan money to a credit union service organization described in this subdivision only if the following requirements are met:

(A) The credit union service organization is adequately capitalized or has a reasonable plan for adequate capitalization if the credit union service organization is to be formed or is newly formed.

(B) The credit union service organization is structured and operated as a separate legal entity from the credit union.

(C) The credit union obtains a written legal opinion that the credit union service organization is structured and operated in a manner that limits the credit union's potential liability for the debts and liabilities of the credit union service organization to not more than the loss of money invested in or loaned to the credit union service organization by the credit union.

(D) The credit union service organization agrees in writing to prepare financial statements and provide the financial statements to the credit union at least quarterly, and to the department upon request.

(E) The credit union service organization agrees in writing to obtain an audit of the credit union service organization from a certified public accountant at least annually and provide a copy of each audit report to the credit union, and to the department upon request. A wholly owned credit union service organization is not required to obtain a separate annual audit if the credit union service organization is included in the annual consolidated audit of the credit union that is the credit union service organization's parent.

(F) The credit union service organization operates in compliance with all applicable federal and state laws.

~~(4)~~ **(5)** To deposit its funds into:

(A) depository institutions that are federally insured; or

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

~~(5)~~ **(6)** 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)~~ **(7)** 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)~~ **(8)** 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)~~ **(9)** 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)~~ **(10)** 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)~~ **(11)** 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. **A credit union may rent excess space at the credit union's main office or branch as a source of income.**

~~(11)~~ **(12)** To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.

~~(12)~~ **(13)** To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

~~(13)~~ **(14)** 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

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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)~~ **(15)** To sell and cash negotiable checks, travelers checks, and money orders for members.

~~(15)~~ **(16)** 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 the purchasing credit union's capital and surplus unless special written authorization has been granted by the department.

~~(16)~~ **(17)** To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

~~(17)~~ **(18)** 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)~~ **(19)** 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)~~ **(20)** 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)~~ **(21)** To sell, pledge, or discount any of its assets. However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.

~~(21)~~ **(22)** To purchase assets of another credit union and to assume the liabilities of the selling credit union.

~~(22)~~ **(23)** To act as a fiscal agent of the United States and to

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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)~~ **(24)** To join the National Credit Union Administration Central Liquidity Facility.

~~(24)~~ **(25)** 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)~~ **(26)** 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)~~ **(27)** To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

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

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

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

~~(27)~~ **(28)** Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon

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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.

(b) A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers granted under this act or by rule, order, or declaratory ruling of the department.

SECTION 67. IC 28-7-1-9.2, AS AMENDED BY P.L.217-2007, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

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

(2) to engage in **mergers, consolidations, reorganizations, or** other activities **or to exercise other powers** authorized for;

federal credit unions domiciled in Indiana.

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

(1) granted to federal credit unions; but

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

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

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

(d) The department may deny the requested rights and privileges if the department finds that:

(1) federal credit unions domiciled in Indiana do not possess the

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requested rights and privileges;

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

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

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

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

(1) the department must:

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

(B) convene a hearing;

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

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

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

(g) If a credit union receives approval to exercise the requested rights and privileges granted to federal credit unions domiciled in Indiana, the department shall determine by order whether all credit unions may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all credit unions will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

(h) If the department denies the request of a credit union under this section to exercise any rights and privileges that are granted to federal credit unions, the credit union may appeal the decision of the department to the circuit court with jurisdiction in the county in which

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the principal office of the credit union is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 68. IC 28-7-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) The membership of credit unions shall be clearly and specifically identified. The membership of a credit union shall be limited to one (1) or more qualified groups of persons, immediate family members of the persons in the qualified group or groups, and organizations of those persons. For purposes of this section, a qualified group consists of:

(1) persons having a common bond of occupation, trade, or professional association;
(2) members of a labor organization;
(3) members of a church;
(4) persons engaged in a common trade or profession within a well defined geographical location;
(5) employees of the credit union;
(6) persons who are members of a farm bureau cooperative, or other farm bureau organization, and who have subscribed to one (1) or more shares; or
(7) persons who reside or are employed within a community.

(b) A credit union may expand its membership with an additional qualified group or groups upon prior approval of the department.

(c) Membership cards must be kept on file and maintained in the credit union's main office for inspection by examiners and must contain at least the following information:

(1) Account number, name, address, date of birth, signature of member, and the date signed.
(2) A statement that the member is eligible for membership in the credit union by reason of employment, membership, affiliation, association, or other relationship with the organization, institution, corporation, or entity included in the credit union's field of membership.
(3) Date, signature, and title of person authorized to record approval by the board, membership officer, or executive committee.

SECTION 69. IC 28-7-1-10.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.1. The department shall consider a person, a firm, a corporation, or an organization to be an illegal member if the person, firm, corporation, or organization:**

(1) became a member of a credit union; and
(2) did not qualify under section 10(a) of this chapter or the

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bylaws of the credit union.

The membership of any illegal member, as determined by the department, shall be terminated and all accounts shall be purged from the active share accounts of the credit union within the period specified in writing by the department. However, a loan agreement between a terminated member and the credit union shall be unaffected by the termination and, if a loan involving an illegal member is secured by shares, the share account, to the extent encumbered by the loan, remains valid until unencumbered.

SECTION 70. IC 28-7-1-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.5. The following apply with respect to the acceptance by credit unions of trusts as members:**

(1) A credit union may accept a trust as a member if:

(A) any of the settlors living at the time of application are eligible for membership; or

(B) none of the settlors is living at the time of application and one (1) or more beneficiaries are eligible for membership.

(2) An account owned by one (1) or more individuals may be titled or retitled in the name of a trust and not in the name of individuals if all of the following are met:

(A) The trust is eligible for membership in the credit union under subdivision (1).

(B) Each owner of the account consents in writing to titling or retitling the account in the name of the trust.

(C) Any beneficiaries listed on the account are removed as beneficiaries by the owners.

(D) The account is an account that provides tax deferrals or any other tax benefit under state or federal law.

(3) If an account is retitled in the name of a trust under subdivision (2), the membership of an individual who had owned all or an interest in the account is terminated unless the individual:

(A) is a member based on ownership of another account; or

(B) qualifies for, applies for, and is accepted into membership.

SECTION 71. IC 28-7-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. Every credit union **and every affiliate of a credit union** shall be subject to examination by the department. A credit union shall be examined by the department

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as often as the department shall deem necessary. The department shall at all times be given free access to all of the books, papers, securities, and other sources of information, ~~in respect to~~ **including audit reports and audit working papers for** any such credit union. The director, the members of the department, and the supervisor in charge of the division shall have the power to subpoena documents and examine witnesses under oath pertaining to the business of the credit union. The department may accept an audit by a certified public accountant and govern its examination procedures and examination fees accordingly. At the close of each examination, a conference shall be conducted to disclose to the board of directors the findings of the examination.

SECTION 72. IC 28-7-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. (a) At the annual meeting, the members shall elect a board of directors and a supervisory committee.

(b) The bylaws:

(1) may provide for a credit committee; and

(2) if a credit committee is provided for, must state whether the credit committee is to be elected by the members or appointed by the board of directors.

(c) The credit committee must consist of not fewer than three (3) nor more than seven (7) members. A director may not be a member of either the credit committee or the supervisory committee.

(d) Each member of the board and each member of the credit committee or the supervisory committee shall take an oath. The length of the term of a member of the board or of the credit committee or the supervisory committee must be set forth in the bylaws.

(e) If a credit union replaces the chief executive officer of the credit union, the credit union shall give the department written notice of the replacement not later than thirty (30) days after replacing a person as the chief executive officer.

(f) Each individual elected or appointed to serve as a director, supervisory committee member, or credit committee member of a credit union, or as a member of any other committee that performs significant ongoing functions relating to the ongoing operations of the credit union, shall meet all of the following criteria:

(1) The individual is a member of the credit union and in good standing according to reasonable criteria established by the credit union board.

(2) The individual is acceptable as a bonding risk by a bonding company licensed to do business in this state.

(3) The individual has not been removed as a director, officer,

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committee member, or employee of a financial institution by a federal regulator, a state regulator, or a court with jurisdiction.

(4) The department has not removed the individual as a director, officer, committee member, or employee of a credit union, financial institution, or other legal entity pursuant to the department's enforcement powers under any law of this state.

(5) The individual has not been convicted of a crime involving dishonesty or breach of trust.

(6) The individual is not habitually negligent in paying the individual's financial obligations as determined by criteria reasonably established by the credit union board.

(7) The individual has not been convicted by a court with jurisdiction of a violation, or found in violation by a court with jurisdiction or the department, of any law of this state enforced or administered by the department.

(g) If an individual no longer meets one (1) or more of the requirements of subsection (f) while serving as a director, supervisory committee member, or credit committee member of a credit union, or as a member of any other committee that performs significant ongoing functions relating to the ongoing operations of the credit union, the:

(1) individual immediately shall be removed from that office without further action of the members of the credit union board; and

(2) credit union shall appoint or elect a replacement to fill the vacancy in the manner described in the bylaws.

SECTION 73. IC 28-7-1-16, AS AMENDED BY P.L.141-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) Not more than thirty (30) business days after the conclusion of the annual meeting, the board of directors shall elect from its own members:

(1) a chairperson;

(2) a vice chairperson or vice chairpersons;

(3) a secretary; ~~and~~

(4) a treasurer; **and**

(5) other officers determined necessary by the board of directors.

(b) The board may appoint officers of the credit union.

(c) The office of secretary and treasurer may be held by the same person. The board may appoint:

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(1) an assistant secretary;
(2) an assistant treasurer; or
(3) both an assistant secretary and an assistant treasurer.

(d) The board of directors shall have the general management of the affairs, funds, and records of the credit union and shall meet at least monthly, **in person or by any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting in accordance with this subsection is considered to be present in person at the meeting. Minutes of every meeting of the board of directors or executive committee shall be kept and maintained.**

(e) The board may appoint an executive committee to exercise authority delegated to it by the board. ~~All actions taken by the executive committee shall be subject to ratification by the board.~~ **The board retains ultimate responsibility for authority delegated to an executive committee.**

(f) ~~Unless the bylaws provide otherwise,~~ It is the duty of the directors to do the following:

~~(1) To act upon all applications for membership unless the board has appointed a membership officer. The board shall receive the report of the membership officer monthly and shall act upon all those applications for membership not approved by the membership officer.~~

~~(2) To determine rates of interest on loans.~~

~~(3)~~ **(1)** To determine:

(A) the maximum number of shares which may be held by a member; and

(B) the maximum amount which may be loaned to a member.

~~(4) To declare dividends.~~

~~(5)~~ **(2)** To amend the bylaws, provided that the qualifications for membership in the credit union are principally defined in the articles of incorporation.

~~(6)~~ **(3)** To fill vacancies on the board and the credit committee until the next election.

~~(7) To invest the funds of the credit union or to delegate the authority for investments to an executive committee or manager. However, the board of directors shall review all investments made by the executive committee or manager at least monthly.~~

~~(8)~~ **(4)** To set the compensation of members of the board, credit committee, or supervisory committee.

~~(9)~~ **(5)** To establish and annually review written lending **and investment** policies and ~~maintain the policies on file in~~ **other**

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policies necessary for the prudent operation of the credit union.

(6) To approve an annual operating budget for the credit union.

(g) The board may appoint loan officers. Each loan officer shall furnish to the credit committee or to the board a record of each loan approved or denied at its next meeting. A loan officer, including the treasurer or assistant treasurer, shall not have authority to disburse funds of the credit union for any loan which has been approved by the loan officer. ~~Not more than one (1) member of the credit committee may be appointed as loan officer.~~

(h) A credit union board is responsible for the performance of all of the duties listed in this subsection. The board may delegate the performance of the duties to the chief executive officer, who may further delegate one (1) or more of the following duties:

(1) Approving, disapproving, or otherwise acting on applications for membership.

(2) Determining the interest rates on loans and on deposits.

(3) Hiring employees other than the chief executive officer and fixing the employees' compensation.

(4) Making and selling investments according to investment policies adopted by the board.

(5) Designating one (1) or more depositories for funds.

(6) Establishing procedures to implement policies of the credit union board.

(7) Establishing internal controls as necessary.

(8) Determining the amount of a dividend after providing for any required reserves and declaring the dividend.

(i) The board of directors by a majority vote may suspend or remove any officer from the officer's duties as an officer.

(j) Unless specifically prohibited by the bylaws, if this chapter requires or allows a credit union board to take an action at a meeting, the board may take that action without a meeting if a consent in writing setting forth the action taken is signed by all of the directors entitled to vote on the matter. A written consent under this subsection must contain one (1) or more written approvals, each of which sets forth the action taken and bears the signature of one (1) or more directors. The directors shall deliver the directors' signed approvals to the secretary, and the secretary shall file the approvals in the corporate records of the credit union. An action taken by written consent under this subsection is effective on the date that all the directors have approved the consent unless the consent specifies a different effective date. A

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consent signed by all the directors has the same effect as a unanimous vote. The credit union may represent that the action was approved by a unanimous vote in any document filed with the department under this act.

SECTION 74. IC 28-7-1-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 16.5. (a) This section governs the participation of board members in board actions.**

(b) Unless a matter involves setting dividends, loan rates, or fees for services or other general policy applicable to all members of the credit union, a director, a committee member, an officer, or an employee of a credit union shall not in any manner, directly or indirectly, participate in the deliberation or board action on any matter that affects the director's, committee member's, officer's, or employee's pecuniary interest or the pecuniary interest of an entity other than the credit union in which the director, committee member, officer, or employee is interested.

(c) If one (1) or more directors are disqualified from participating in a matter before the credit union board under subsection (b), the remaining qualified directors present at the meeting, if together with the disqualified director constitutes a quorum, may by majority vote exercise all the powers of the board with respect to the matter under consideration. If all of the directors are disqualified, the members of the credit union shall act on the matter.

(d) If one (1) or more committee members are disqualified from participating in a matter before the committee under subsection (b), the remaining qualified committee members, if together with the disqualified committee member constitutes a quorum, may by majority vote exercise all the powers of the committee with respect to the matter under consideration. If all the committee members are disqualified, the credit union board shall act on the matter.

SECTION 75. IC 28-7-1-17, AS AMENDED BY P.L.217-2007, SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) Every loan application shall be submitted on a form approved by the board of directors. When making an application, a member shall state the security offered. Loans may be dispersed upon written approval by a majority of the credit committee or a loan officer. If the credit committee or loan officer fails to approve an application for a loan, the applicant may appeal to the board of directors, providing such appeal is authorized by the bylaws.

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(b) Loans to members may be made only under the following terms and conditions:

(1) All loans shall be evidenced by notes signed by the borrowing member.

(2) Except as otherwise provided in this section, the terms of any loan to a member with a maturity of more than six (6) months shall provide for principal and interest payments that will amortize the obligation in full within the terms of the loan contract. If the income of the borrowing member is seasonal, the terms of the loan contract may provide for seasonal amortization.

(3) Loans may be made upon the security of improved or unimproved real estate. Except as otherwise specified in this section, such loans must be secured by a first lien upon real estate prior to all other liens, except for taxes and assessments not delinquent, and may be made with repayment terms other than as provided in subdivision (2). When the amount of a loan is at least two hundred fifty thousand dollars ($250,000), the fair cash value of real estate security shall be determined by a written appraisal made by one (1) or more qualified state licensed or certified appraisers designated by the board of directors. The credit union loan folder for real estate mortgage loans shall include: ~~when applicable:~~

(A) the loan application;

(B) the mortgage instrument;

(C) the note;

(D) the disclosure statement;

(E) the ~~documentations~~ **documentation** of property insurance;

(F) an appraisal on the real estate for which the loan is made; and

(G) the attorney's opinion of titles or a certificate of title insurance on the real estate upon which the mortgage loan is made.

(4) Loans made upon security of real estate are subject to the following restrictions:

(A) Real estate loans in which no principal amortization is required shall provide for the payment of interest at least annually and shall mature within five (5) years of the date of the loan unless extended and shall not exceed fifty percent (50%) of the fair cash value of the real estate used as security.

(B) Real estate loans on improved real estate, except for variable rate mortgage loans and rollover mortgage loans provided for in subdivision (5), shall require substantially

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equal payments at successive intervals of not more than one (1) year, shall mature within thirty (30) years, and shall not exceed one hundred percent (100%) of the fair cash value of the real estate used as security.

(C) Real estate loans on unimproved real estate may be made. The terms of the loan shall:

(i) require substantially equal payments of interest and principal at successive intervals of one (1) year or less;

(ii) mature within ten (10) years; and

(iii) not exceed eighty-five percent (85%) of the fair cash value of the real estate used as security.

(D) Loans primarily secured by a mortgage which constitutes a second lien on improved real estate may be made only if the aggregate amount of all loans on the real estate does not exceed one hundred percent (100%) of the fair cash value of the real estate after such loan is made. Repayment terms shall be in accordance with subdivision (2).

(E) Real estate loans may be made for the construction of improvements to real property. Funds borrowed may be advanced as work on the improvements progresses. Repayment terms must comply with subdivision (2).

(5) Subject to the limitations of subdivision (3), variable rate mortgage loans and rollover mortgage loans may be made under the same limitations and rights provided state chartered savings associations under IC 28-1-21.5 (before its repeal) or IC 28-15 or federal credit unions.

(6) **As used in this subdivision, "originating lender" means the participating lender with which the member contracts.** A credit union may participate with other **state and federal depository** financial institutions in making loans to credit union members and may sell a participating interest in any of its loans **under written participation loan policies established by the board of directors.** However, the credit union may not sell more than ninety percent (90%) of the principal of participating loans outstanding at the time of sale. **A participating credit union that is not the originating lender may participate only in loans made to the credit union's own members or to members of another participating state or federal credit union. A master participation agreement must be properly executed. The agreement must include provisions for identifying, either through documents incorporated by reference or directly in**

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the agreement, the participation loan or loans prior to the sale of the loans.

(7) Notwithstanding subdivisions (1) through (6), a credit union may make any of the following:

(A) Any loan that may be made by a federal credit union. However, IC 24-4.5 applies to any loan that is:

(i) made under this clause; and

(ii) within the scope of IC 24-4.5.

Any provision of federal law that is in conflict with IC 24-4.5 does not apply to a loan made under this clause.

(B) Subject to subdivision (3), any alternative mortgage loan (as defined in IC 28-15-11-2) that may be made by a savings association (as defined in IC 28-15-1-11) under IC 28-15-11. A loan made under this clause by a credit union is subject to the same terms, conditions, exceptions, and limitations that apply to an alternative mortgage loan made by a savings association under IC 28-15-11.

(8) A credit union may make a loan under either:

(A) subdivisions (2) through (6); or

(B) subdivision (7);

but not both. A credit union shall make an initial determination as to whether to make a loan under subdivisions (2) through (6) or under subdivision (7). If the credit union determines that a loan or category of loans is to be made under subdivision (7), the written loan policies of the credit union must include that determination. A credit union may not combine the terms and conditions that apply to a loan made under subdivisions (2) through (6) with the terms and conditions that apply to a loan made under subdivision (7) to make a loan not expressly described and authorized either under subdivisions (2) through (6) or under subdivision (7).

(c) Nothing in this section prevents any credit union from taking an indemnifying or second mortgage on real estate as additional security.

SECTION 76. IC 28-7-1-17.1, AS AMENDED BY P.L.90-2008, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17.1. (a) A credit union may make a loan to the credit union's individual 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:

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(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 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) The total amount of all loans made under this section may not exceed the credit union's 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 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) Approval by the board of directors under subsection (a)(4) 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.

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

(d) If a loan made to or cosigned, endorsed, or guaranteed by a director or a member of the supervisory, credit, or other

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committee is more than three (3) months delinquent, the individual:

(1) is automatically removed from the individual's position as director or committee member; and

(2) is ineligible to serve as a director or committee member for two (2) years.

The director may waive the application of this subsection if the director determines that it is in the best interests of the credit union.

SECTION 77. IC 28-7-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) The supervisory committee shall cause the share and loan accounts of the members to be verified with the records of the treasurer at least each biennium.

(b) The supervisory committee shall supervise the acts of the board of directors, credit committee, and officers.

(c) By a majority vote, the supervisory committee may call a meeting of the shareholders to consider any violation of this chapter, or of the bylaws, or any practice of the credit union which, in the opinion of the committee is unsafe and unauthorized.

(d) The supervisory committee shall fill vacancies in its own number until the next annual meeting of the members.

(e) At the close of the audit period, the supervisory committee shall make or cause to be made a thorough audit of the credit union for each audit period and shall make a full report to the directors. The audit shall be made at any time during the one hundred twenty (120) days following the close of the audit period. Tapes, work papers, schedules, and evidence of verification of accounts shall be retained until the next examination by the department. A summary of the report shall be read at the annual meeting and shall be filed and preserved with the records of the credit union.

(f) A credit union with assets of at least ~~ten million dollars ($10,000,000)~~ **five million dollars ($5,000,000)** shall have an annual audit performed by an outside professional accounting firm. The department may require a professional outside audit to be performed upon any credit union when the department questions the safety and soundness of the credit union.

(g) Minutes of every meeting of the supervisory committee shall be kept and maintained.

SECTION 78. IC 28-7-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 19. The capital of a credit union shall consist of the payments on shares which have been made to it by members. A credit union may attach a lien on the shares

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of any member with outstanding obligations to the credit union. A credit union may, upon the resignation of a member, cancel the shares of such member, and apply the withdrawal value of such shares towards the liquidation of the member's obligations. Fully paid up shares of a credit union may be transferred to any qualified member upon such terms as the bylaws provide. **If a federal credit union is authorized by the federal regulatory authority with jurisdiction or by federal law to utilize one (1) or more forms of secondary capital, the department may by rule, order, or declaratory ruling allow a credit union to utilize one (1) or more forms of secondary capital. The rule, order, or declaratory ruling must include disclosure requirements concerning the conditions for return of the secondary capital and the liquidation priority of the secondary capital.**

SECTION 79. IC 28-7-1-20.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20.1. **(a)** Shares may be issued as the bylaws provide. The provisions of IC 28-1-20-6 apply to loans to any borrower and shall inure to the benefit of the credit union. Shares may be issued in a joint tenancy with right of survivorship, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless the tenant is a member.

(b) A credit union may issue shares to and receive deposits from a minor. The minor may withdraw the deposits or shares and any dividends or interest on the deposits or shares. A deposit, investment in a share, or withdrawal under this subsection by a minor is valid and enforceable. The minor is considered an adult with respect to the deposit, investment, or withdrawal.

SECTION 80. IC 28-7-1-22, AS AMENDED BY P.L.90-2008, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22. **(a)** 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 of the credit union.

(b) A credit union may receive deposits of state and federal public funds, including the right to pledge securities or other assets for the repayment of the deposits if the pledge is permitted by applicable law or regulation.

SECTION 81. IC 28-7-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. (a) All entrance charges shall, after payment of the organization expenses, be known as reserve income, and shall be added to the regular reserve of the credit union. At the close of the dividend period, there shall be set apart to the regular reserve ten percent (10%) of gross income until the regular

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reserve shall equal seven and one-half percent (7 1/2%) of the total of outstanding loans, then five percent (5%) of gross income until the regular reserve shall equal ten percent (10%) of the total of outstanding loans. Whenever the regular reserve falls below ten percent (10%) or seven and one-half percent (7 1/2%) of the total of outstanding loans, it shall be replenished by regular contributions to maintain the reserve goals of seven and one-half percent (7 1/2%) or ten percent (10%). The regular reserve shall be held to meet contingencies and shall not be distributed to the members except upon dissolution of the credit union.

(b) A credit union may have an undivided profits account. The undivided profits account may be transferred to the regular reserve. ~~or used for the payment of dividends or necessary operating expenses with board approval.~~

(c) The department may, by rule, revise the formula prescribed by this section. A revised formula must be prudent and must reasonably be expected to protect the credit unions.

(d) Financial statements of credit unions must provide for full and fair disclosure of all assets, liabilities, and members' equity, including such allowance for loan loss accounts necessary to present fairly the financial position, and all income and expenses necessary to present fairly the results of operation for the period concerned.

(e) The maintenance of an allowance for loan losses and investment or other losses does not exempt a credit union from the requirement set forth in subsection (a) or regulation CU-2. The totals of the regular reserve, the allowance for loan losses account, and the allowance for investment losses shall be combined for determining the percentage of gross income to be transferred to the regular reserve.

(f) Loan losses of a credit union must be charged against the allowance for loan loss. Adjustments to the allowance for loan losses shall be made before the distribution of any dividend so that the allowance for loan loss represents the value of loans and anticipated losses resulting from:

(1) uncollectible loans, notes, and contracts receivable, including any uncollectible accrued interest receivable thereon;

(2) assets acquired in liquidation of loans; and

(3) loans purchased from other credit unions.

(g) Adjustments to the allowance for loan losses must be recorded in the expense account "provision for loan losses".

(h) If the balance of the allowance for loan losses is considered to be in excess of the amount needed to meet the full and fair disclosure requirements, the excess amount must be transferred to the regular

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reserve account or deducted from the provision for loan loss expense account.

SECTION 82. IC 28-7-1-24.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 24.1. (a) Notwithstanding the provisions of section 24(a) of this chapter as they apply to the regular reserve formula, a credit union that:**

(1) has only share accounts that are insured by an agency of the federal government, the state, or an insuring entity that is approved by the department to insure credit union shares;

(2) has assets of five hundred thousand dollars ($500,000) or more; and

(3) has been in operation for more than four (4) years;

may maintain reserves in accordance with this section.

(b) For the purpose of this section, "risk assets" means all assets except the following:

(1) Cash on hand.

(2) Deposits or shares in federally or state insured banks, savings and loan associations, and credit unions.

(3) Investments that are direct or indirect obligations of the United States government or its agencies.

(4) Loans to other credit unions.

(5) Student loans insured under the Higher Education Act (20 U.S.C. 1071 et seq.) or similar state insurance programs.

(6) Loans insured under the National Housing Act (12 U.S.C. 1703) by the Federal Housing Authority.

(7) Credit union mutual funds authorized by the Indiana Credit Union Act under IC 28-7-1-9(3)(I).

(8) Prepaid expenses.

(9) Accrued interest on nonrisk investments.

(10) Furniture and equipment.

(11) Land and buildings.

(12) Loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of loan outstanding.

(13) Loans that are purchased from liquidating credit unions and guaranteed by an insuring agency of the federal government, the state, or an agency approved by the department to insure credit union share accounts.

(c) At the end of each accounting period, the gross income shall be determined. Based on the amount of gross income, ten percent (10%) of the gross income shall be set aside, as a regular reserve,

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until the reserve shall equal four percent (4%) of total risk assets, and then five percent (5%) of the gross income shall be set aside, until the reserve shall equal six percent (6%) of total risk assets.

(d) Except for the method of calculating the regular reserve formula, all other provisions of section 24 of this chapter pertaining to entrance fees and charges, requirements of a special reserve for delinquent loans, and waiver of such special reserve, shall apply to credit unions that have reserves that are calculated under this section.

SECTION 83. IC 28-7-1-26.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 26.3. (a) A credit union board may terminate the membership of, or terminate some or all services to, a member who does any of the following:**

(1) Causes a loss to the credit union.

(2) Commits fraud or another misdeed against the credit union or against a person on the premises of the credit union.

(b) Pending action by the credit union board at the credit union board's next regularly scheduled meeting, a credit union may immediately suspend any credit union services to a member who does any of the following:

(1) Causes a loss to the credit union.

(2) Commits fraud or another misdeed against:

(A) the credit union; or

(B) a person on the premises of the credit union.

(c) A member may withdraw from a credit union at any time. However, the credit union may require a notice of withdrawal from the withdrawing member as a condition of withdrawal.

(d) Unless the withdrawal of a member occurs on a maturity date or not later than seven (7) days after a maturity date, a credit union may require that a withdrawing member give sixty (60) days written notice of the member's intention to withdraw shares. A credit union may waive an applicable notice period for a specific member or account in writing.

(e) After a termination or withdrawal under this section, the former member has no rights in the credit union. However, the termination or withdrawal does not release the former member from any remaining liability to the credit union.

SECTION 84. IC 28-7-1-26.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 26.5. (a) A credit union may**

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refuse to make a payment from an account to a person claiming an interest in the account if the credit union:

(1) is uncertain under the agreement governing the account of who is entitled to receive the payment; or

(2) has actual knowledge of a dispute between any account owners, beneficiaries with present vested rights in the account, or other persons concerning ownership of the money in the account, the proposed withdrawal, or any previous withdrawals from the account.

(b) If a credit union refuses to make a payment under subsection (a), the credit union:

(1) must notify, in writing, the account owners, beneficiaries with present vested rights in the account, and other persons claiming an interest in the account of the basis for the credit union's refusal; and

(2) may refuse to make the payment until all interested parties consent in writing to the requested payment or a court with jurisdiction orders the credit union to make the payment.

(c) The credit union is not liable in damages as a result of an action taken under this section.

SECTION 85. IC 28-7-1-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 31. Every credit union shall make provisions for adequate fidelity coverage for **directors,** officers, and employees of the credit union. The amount and form of fidelity coverage must be approved by the board of directors of the credit union. Coverage may be provided:

(1) in the form of a blanket fidelity bond issued by a corporate surety authorized to transact business in Indiana; or

(2) through the establishment of a separate reserve fund within the credit union for that purpose.

SECTION 86. IC 28-7-1-31.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 31.3. (a) As used in this section, "official" means an individual who is or who was a director, committee member, officer, or employee of a credit union.**

(b) An official of a domestic credit union shall discharge the duties of the official's position in good faith and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the official's duties, an official may rely upon:

(1) the opinion of legal counsel for the credit union;

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(2) the report of an independent appraiser selected with reasonable care by:

(A) the board; or

(B) an officer of the credit union; or

(3) financial statements of the credit union:

(A) represented to the official to be correct by the:

(i) chief executive officer; or

(ii) officer of the credit union having charge of the credit union's records; or

(B) stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the credit union.

(c) As used in this section, "credit union" includes all other credit unions that become related to a credit union by a consolidation or merger and the resulting or continuing credit union.

(d) A credit union may indemnify a director, a committee member, an officer, an employee, or an agent to the extent and in the same manner that a corporation may indemnify a director, committee member, officer, employee, or agent under IC 28-13-13-2 through IC 28-13-13-13.

SECTION 87. IC 28-7-1-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 33. (a) Any two (2) or more credit unions may, with the approval of the department, merge. This section authorizes the merger of a credit union organized under this chapter with a credit union organized under any other law.

(b) The board of directors of each credit union participating in the merger must by majority vote approve a joint agreement of merger.

(c) After the resolutions approving a joint agreement of merger have been adopted by the board of directors of each credit union, the credit unions shall submit the resolutions and joint agreement to the department for approval. **The department may, in the department's discretion, approve or disapprove the resolution and joint agreement. In deciding whether to approve or disapprove the resolution and joint agreement under this section, the department shall consider the following factors:**

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

(2) Whether the financial condition of any credit union subject to the proposed transaction will jeopardize the financial stability of any other credit unions subject to the proposed transaction.

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(3) Whether the proposed transaction will result in a credit union that has inadequate capital, unsatisfactory management, or poor earnings prospects.

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

(5) Whether the credit unions subject to the proposed transaction furnish all the information the department requires in reaching the department's decision.

(d) If the joint agreement is approved by the department, any credit union whose existence will terminate as a result of the merger shall submit the joint agreement to a vote of its shareholders at the meeting directed by the resolution of the board of directors. A majority of the shareholders present at the meeting may approve the joint agreement. However, the department may permit the merger to become effective without the affirmative vote of the membership of a credit union if that credit union is in danger of insolvency or if the qualified group or groups associated with the credit union either have ceased or will soon cease to exist.

(e) After approval of the joint agreement by the shareholders of the merging credit unions, each credit union shall execute in triplicate articles of merger, on forms furnished by the department, which shall set forth the following:

(1) The time and place of the meeting of the board of directors at which the plan was approved.

(2) The vote by which the plan was approved by the board.

(3) A copy of the resolution or other action by which the plan was agreed upon.

(4) The time and place of the meeting of the members at which the plan was approved.

(5) The vote by which the plan was approved by the members.

(f) The articles, joint agreement, and resolutions shall be delivered to the department for certification, which shall be evidenced in the manner prescribed in IC 28-12-5, and shall be presented to the secretary of state for recording. The secretary of state shall file one (1) copy of the articles of merger and shall issue a certificate of merger and two (2) copies of the articles of merger to the surviving credit union. The date on which the secretary of state issues the certificate of merger is the effective date of the merger.

(g) The articles of merger shall be filed with the county recorder of

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the county in which the principal office of the surviving credit union is located.

SECTION 88. IC 28-7-5-4, AS AMENDED BY P.L.3-2008, SECTION 223, AND AS AMENDED BY P.L.90-2008, SECTION 49, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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) ~~*the applicant*~~ 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:

(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);*

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(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~~ **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 89. IC 28-7-5-10.1, AS AMENDED BY P.L.90-2008, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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~~ **oversees** the liquidation of the licensee's business;

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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.

(c) If:

(1) a license is revoked under section 13 of this chapter and the director determines that it is not in the best interests of the public for the licensee to liquidate the business; or

(2) the director otherwise determines that it is not in the best interests of the public;

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 liquidation.

SECTION 90. IC 28-7-5-10.6, AS AMENDED BY P.L.90-2008, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, 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) 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 91. IC 28-7-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. ~~Every licensee~~ **A license** ~~shall pay to the department~~ **must be renewed** before June 1 of each year ~~a~~ **by filing a renewal application prescribed by the director. The department shall prescribe the form of the renewal**

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application. To be accepted for processing, the license renewal fee fixed by the department under IC 28-11-3-5 ~~for the license renewal.~~ **and all other information and documents requested by the director must be filed with the renewal application.** The department may impose a **daily late** fee ~~of five dollars ($5) per day~~ **fixed by the department under IC 28-11-3-5** on any **renewal** license ~~fee~~ that is not received before June 1.

SECTION 92. IC 28-7-5-15.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 15.1. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County, Indiana, at a location designated by the director.**

SECTION 93. IC 28-7-5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22. **(a)** The holder of ~~such~~ **a** ticket **described in section 21 of this chapter** shall be presumed to be the person entitled to redeem the pledge, and, **except as provided in subsection (b),** the pawnbroker shall deliver the pledge to the person presenting the ticket, upon payment of principal, interest and charge.

(b) If a local ordinance or other law requires the retention of the pledge for a specific period of time, the pawnbroker shall comply with the local ordinance or other law.

SECTION 94. IC 28-7-5-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. **(a) Except as provided in subsection (b)** when a ticket, instead of being presented in person, is sent to the pawnbroker by mail, accompanied with a money order for the total amount due and a reasonable fee for shipping and handling, the pawnbroker may securely pack and forward the pledge to the pledger in accordance with the remitter's instructions. If the remittance is insufficient to cover the amount due, the pawnbroker shall either notify the remitter of the amount of the deficiency or send the pledge subject to the payment of shipping charges by the consignee. The pawnbroker's liability for the pledge shall cease upon delivery of the pledge to the carrier or his agent.

(b) If a local ordinance or other law requires the retention of the pledge for a specific period of time, the pawnbroker shall comply with the local ordinance or other law.

SECTION 95. IC 28-7-5-38.1, AS ADDED BY P.L.90-2008, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2009]: Sec. 38.1. If the department determines, after notice and opportunity ~~for hearing,~~ **to be heard,** 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 96. IC 28-8-4-20, AS AMENDED BY P.L.90-2008, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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 jurisdiction.

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

(1) the time of application;

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

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

(e) For purposes of subsection (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

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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 97. IC 28-8-4-32, AS AMENDED BY P.L.217-2007, SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 32. (a) An application must be accompanied by a nonrefundable application fee as fixed by the department under IC 28-11-3-5.

(b) If a license is granted, the application fee constitutes the license fee for the applicant's activities through ~~December~~ **March** 31 of the year in which the initial license is granted.

SECTION 98. IC 28-8-4-40.6, AS AMENDED BY P.L.90-2008, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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 35(b)(2) or 35(b)(3) of this chapter, is under indictment for a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction.

(2) The licensee, or any individual described in section 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) of this chapter, whichever applies:

(1) not later than thirty (30) days after the licensee or individual described in section 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 99. IC 28-8-4-52 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 52. ~~The provisions of~~

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Except as otherwise provided, IC 4-21.5 ~~shall apply to any hearing afforded under this chapter.~~ **applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County, Indiana, at a location designated by the director.**

SECTION 100. IC 28-8-5-11, AS AMENDED BY P.L.90-2008, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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 any individual described in section 12(b)(1) of this chapter:

(A) Name.

(B) Residence address.

(C) Business address.

(D) Whether the person:

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

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

(3) The address where the applicant's office or offices will be located. If any business, other than the business of cashing checks under this chapter, will be conducted by the applicant or another person at any of the locations identified under this subdivision, the applicant shall indicate for each location at which another business will be conducted:

(A) the nature of the other business;

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

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

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

(E) any other information that the director may require.

(4) Such other data, financial statements, and pertinent

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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 101. IC 28-8-5-12, AS AMENDED BY P.L.90-2008, SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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 for any of the following reasons:

(1) Any of the following has been convicted of a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction:

(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.

(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

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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 102. IC 28-8-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. A license ~~may~~ **must** be renewed for twelve (12) months upon the filing of a renewal application **as prescribed by the director of the department. The department shall prescribe a form for the renewal application. To be accepted for processing, the license renewal fee as described in this section and all information and documents requested by the director of the department must be filed with the renewal application.** Each licensee shall pay to the department before July 1 of each year a fee fixed by the department under IC 28-11-3-5 as a renewal fee. The department may fix a daily late fee under IC 28-11-3-5 for a renewal license that is not received before July 1.

SECTION 103. IC 28-8-5-18.4, AS ADDED BY P.L.217-2007, SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18.4. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:

(1) The licensee, or any individual described in section 11(b)(2) of this chapter, is under indictment for a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction.

(2) The licensee, or any individual described in section 11(b)(2) of this chapter, has been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 11(b)(2)(D) of this chapter:

(1) not later than thirty (30) days after the licensee or individual described in section 11(b)(2) of this chapter:

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

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

whichever applies; or

(2) if the licensee's next license renewal fee under section 15 of this chapter is due before the date described in subdivision (1),

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along with the licensee's next license renewal fee under section 15 of this chapter.

SECTION 104. IC 28-8-5-21.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 21.1. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County, Indiana, at a location designated by the director.**

SECTION 105. IC 28-8-5-22.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22.5. (a) A license issued by the department under this chapter shall be revoked by the department if the person fails to:

(1) file any renewal ~~form required~~ **applications prescribed** by the ~~department,~~ **director;** or

(2) pay any license renewal fee described under section 15 of this chapter;

~~for a period of at least two (2) years.~~ **more than sixty (60) days after the date the renewal is due.**

(b) A person whose license is revoked under this section may:

(1) pay all delinquent fees and apply for a new license; or

(2) appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

SECTION 106. IC 28-10-1-1, AS AMENDED BY P.L.90-2008, SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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, ~~2007.~~ **2008.**

SECTION 107. IC 28-11-1-9.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9.1. (a) This section applies to a meeting of the members at which at least four (4) members are physically present at the place where the meeting is conducted.**

(b) A member may participate in a meeting of the members by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the

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meeting.

(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) A member who participates in a meeting under subsection (b) may act as a voting member on official action only if that official action is voted upon by at least four (4) members of the board physically present at the place where the meeting is conducted.

(e) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who:

(1) was physically present at the place where the meeting was conducted;

(2) participated in the meeting by using a means of communication described in subsection (b); and

(3) was absent.

(f) A member who participates in a meeting under subsection (b) may not cast the deciding vote on any official action.

SECTION 108. IC 28-11-1-15, AS ADDED BY P.L.217-2007, SECTION 93, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. If the governor:

(1) declares, under IC 10-14-3-12, a state of emergency in all or part of Indiana; or

(2) in the absence of a declaration under subdivision (1), gives prior approval to the director;

the director is authorized to take necessary and appropriate action to establish or preserve safe and sound methods of banking and **other action the director considers necessary under the circumstances** to **promote and** safeguard the interests of depositors, debtors, consumers, ~~and~~ creditors, **or the public.**

SECTION 109. IC 28-11-3-5, AS AMENDED BY P.L.57-2006, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this section, "assets" means the assets of a financial institution as disclosed by a report made by the financial institution at the end of the year immediately preceding the fiscal year in which a fee is fixed under this section.

(b) The department shall fix and collect, on an annual basis, a schedule of fees for the services rendered and the duties performed by the department in the administration of financial institutions.

(c) The fees may not exceed the comparative cost to the department in the administration of financial institutions. In determining the costs, the department may classify the assets of financial institutions and fix fees at different rates for the examination, supervision, regulation, and

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liquidation of the classes of assets, based on the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions.

(d) The fees shall be charged and collected until changed or modified by the department. A change or modification of fees may not be adopted more often than one (1) time each state fiscal year. A modified schedule of fees is effective on the first day of the state fiscal year following the fiscal year in which the modification is adopted.

(e) Administrative charges included in the fee are in addition to charges collected under other statutes.

(f) If the reasonable costs of performing an examination of a financial institution exceed the fees established under this section, the financial institution shall pay the excess costs not later than thirty (30) days after receipt of an invoice from the department. The department may impose a fee, in an amount fixed by the department under this section, for each day that the excess costs are not paid, beginning on the first day after the thirty (30) day period described in this subsection.

SECTION 110. IC 28-13-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) An officer may resign at any time by delivering notice:

(1) to the board of directors, its chairman, or the secretary of the corporation; or

(2) if the articles of incorporation or bylaws so provide, to another designated officer.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, the corporation's board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(c) A board of directors may remove any officer at any time with or without cause.

(d) An officer who appoints another officer or assistant officer may remove the appointed officer or assistant officer at any time with or without cause.

(e) If a corporation replaces the chief executive officer of the corporation, the corporation shall give the department written notice of the replacement not later than thirty (30) days after replacing a person as the chief executive officer.

SECTION 111. IC 28-15-2-2, AS AMENDED BY P.L.217-2007, SECTION 103, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2009]: Sec. 2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

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

(2) to engage in **mergers, consolidations, reorganizations, or** other activities **or to exercise other powers** authorized for;

federal savings associations domiciled in Indiana.

(b) Subject to this section, savings associations may exercise the rights and privileges that are granted to federal savings associations.

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

(1) granted to federal savings associations; but

(2) not authorized for savings associations under:

(A) the Indiana Code (except for this section); or

(B) a rule adopted under IC 4-22-2;

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

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

(e) The department may deny the requested rights and privileges if the department finds that:

(1) federal savings associations in Indiana do not possess the requested rights and privileges;

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

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

(4) the failure of the department to approve the requested rights

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and privileges will not result in a competitive disadvantage to the savings association.

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

(1) the department must:

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

(B) convene a hearing;

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

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

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

(h) If a savings association receives approval to exercise the requested rights and privileges granted to national savings associations domiciled in Indiana, the department shall determine by order whether all savings associations may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all savings associations will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

(i) If the department denies the request of a savings association under this section to exercise any rights and privileges that are granted to national savings associations, the company may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the savings association is located.

SECTION 112. THE FOLLOW ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 28-1-29-7; IC 28-1-29-10; IC 28-1-29-12; IC 28-7-1-26.

SECTION 113. **An emergency is declared for this act.**

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