

HOUSE BILL No. 1646

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-2-5; IC 23-19.

Synopsis: Loan brokers and Uniform Securities Act. Amends the statute concerning the regulation of loan brokers to specify that the law applies to residential mortgage loans. Provides that mortgage loan originators and principal managers must be licensed, rather than registered, by the securities commissioner (commissioner). Reduces the application fees for licensure as a loan broker, mortgage loan originator, or principal manager. Changes the amount of the bond that a loan broker licensee must maintain from \$50,000 to an amount equal to: (1) \$50,000; (2) \$100,000; or (3) \$150,000; depending on the total amount of residential mortgage loans originated by the licensee in the previous calendar year. Requires: (1) licensed mortgage loan originators; (2) licensed principal managers; and (3) certain individuals associated with licensed loan brokers; to submit fingerprints to the commissioner every three years for use in criminal history background checks. Requires an applicant for licensure as a mortgage loan originator or as a principal manager to authorize the commissioner to obtain a consumer report concerning the applicant. Sets forth requirements for the written examination that each applicant for licensure as a mortgage loan originator or as a principal manager is required to take. Requires a licensee to renew the licensee's license annually, instead of biennially. Requires, rather than allows, the commissioner to deny, suspend, or revoke a license under certain circumstances. Increases the criminal penalty for violation of the loan broker statute from a Class D to a Class C felony. Provides that a violation is a Class B felony if the person damaged by the violation is at least 60 years of age. Requires a loan broker licensee to maintain a
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Effective: July 1, 2009.

Burton

January 16, 2009, read first time and referred to Committee on Financial Institutions.



report of all residential mortgage loans originated by the licensee, including pending loans and loans that were not closed. Prohibits a person, in connection with a contract for loan brokerage services, from: (1) violating certain federal laws and regulations concerning residential mortgage lending; and (2) recommending a residential mortgage loan to a borrower without reasonable grounds to believe that the borrower will have the ability to repay the loan as written. Provides that an individual who acts solely as a loan processor or underwriter shall not represent to the public that the individual may or will perform mortgage loan origination activities. Provides that the academic instruction that a person must complete to obtain or maintain a license must include specified hours of instruction in certain courses. Requires each loan broker licensee to submit periodic reports of condition to: (1) the commissioner; and (2) the National Mortgage Licensing System and Registry. Amends the uniform securities act to provide that: (1) a registered broker-dealer office that is selected to complete a compliance report shall file its report not later than 45 days (instead of 90 days under current law) after being notified of its selection; and (2) a person who knowingly violates the act while using or taking advantage of a relationship based on religious affiliation or worship commits a Class B felony. Repeals a provision exempting certain persons from the loan broker statute.

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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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HOUSE BILL No. 1646

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

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

1 SECTION 1. IC 23-2-5-3, AS AMENDED BY P.L.145-2008,
 2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2009]: Sec. 3. ~~(a) As used in this chapter, "certificate of~~
 4 ~~registration" means a certificate issued by the commissioner~~
 5 ~~authorizing an individual to:~~
 6 ~~(1) engage in origination activities on behalf of a licensee; or~~
 7 ~~(2) act as a principal manager on behalf of a licensee.~~
 8 ~~(b)~~ **(a)** As used in this chapter, "**loan broker** license" means a
 9 license issued by the commissioner authorizing a person to engage in
 10 the loan brokerage business.
 11 ~~(c)~~ **(b)** As used in this chapter, "licensee" means a person that is
 12 issued a license under this chapter.
 13 ~~(d)~~ **(c)** As used in this chapter, "loan broker" means any person who,
 14 in return for any consideration from any source procures, attempts to
 15 procure, or assists in procuring, a **residential mortgage** loan from a



- 1 third party or any other person, whether or not the person seeking the
- 2 loan actually obtains the loan. "Loan broker" does not include:
- 3 (1) any supervised financial organization (as defined in
- 4 IC 24-4.5-1-301(20)), including a bank, savings bank, trust
- 5 company, savings association, or credit union;
- 6 (2) any other financial institution that is:
- 7 (A) regulated by any agency of the United States or any state;
- 8 and
- 9 (B) regularly actively engaged in the business of making
- 10 consumer loans that are not secured by real estate or taking
- 11 assignment of consumer sales contracts that are not secured by
- 12 real estate;
- 13 (3) any insurance company;
- 14 (4) any person arranging financing for the sale of the person's
- 15 product; or
- 16 (5) a creditor that is licensed under IC 24-4.4-2-402.

17 ~~(e)~~ (d) As used in this chapter, "loan brokerage business" means a
 18 person acting as a loan broker.

19 ~~(f)~~ (e) As used in this chapter, "**mortgage loan** origination
 20 activities" means ~~communication with or assistance of a borrower or~~
 21 ~~prospective borrower in the selection of loan products or terms;~~
 22 **performing any of the following activities for compensation or gain**
 23 **in connection with a residential mortgage loan:**

- 24 (1) **Receiving or recording a borrower's or potential**
- 25 **borrower's residential mortgage loan application information**
- 26 **in any form for use in a credit decision by a creditor.**
- 27 (2) **Offering to negotiate or negotiating terms of a residential**
- 28 **mortgage loan.**

29 ~~(g)~~ (f) As used in this chapter, "**mortgage loan** originator" means
 30 a person **an individual** engaged in **mortgage loan** origination
 31 activities. The term "~~originator~~" does not include a person who:
 32 performs origination activities for any entity that is not a loan broker
 33 under subsection (d):

- 34 (1) **performs purely administrative or clerical tasks on behalf**
- 35 **of a mortgage loan originator or acts as a loan processor or**
- 36 **underwriter;**
- 37 (2) **performs only real estate brokerage activities and is**
- 38 **licensed in accordance with IC 25-34.1 or the applicable laws**
- 39 **of another state, unless the person is compensated by a**
- 40 **creditor, a loan broker, a mortgage loan originator, or any**
- 41 **agent of a creditor, a loan broker, or a mortgage loan**
- 42 **originator; or**

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1 **(3) is involved only in extensions of credit relating to time**
 2 **share plans (as defined in 11 U.S.C. 101(53D)).**

3 **(g) As used in this chapter, "mortgage loan originator license"**
 4 **means a license issued by the commissioner authorizing an**
 5 **individual to act as a mortgage loan originator on behalf of a loan**
 6 **broker licensee.**

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

11 ~~(i) As used in this chapter, "registrant" means an individual who is~~
 12 ~~registered:~~

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

14 ~~(2) as a principal manager.~~

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

21 ~~(k) (j) As used in this chapter, "principal manager" means an~~
 22 ~~individual who:~~

23 ~~(1) has at least three (3) years of experience:~~

24 ~~(A) as a ~~loan broker~~, mortgage loan originator; or~~

25 ~~(B) in financial services;~~

26 ~~that is acceptable to the commissioner; and~~

27 ~~(2) is principally responsible for the supervision and management~~
 28 ~~of the employees and business affairs of a loan broker licensee.~~

29 **(k) As used in this chapter, "principal manager license" means**
 30 **a license issued by the commissioner authorizing an individual to**
 31 **act as:**

32 **(1) a principal manager; or**

33 **(2) a mortgage loan originator;**

34 **on behalf of a loan broker licensee.**

35 **(l) As used in this chapter, "bona fide third party fee", with**
 36 **respect to a residential mortgage loan, includes any of the**
 37 **following:**

38 **(1) Fees for real estate appraisals. However, if the residential**
 39 **mortgage loan is governed by Title XI of the Financial**
 40 **Institutions Reform, Recovery, and Enforcement Act (12**
 41 **U.S.C. 3331 through 3352), the fee for an appraisal performed**
 42 **in connection with the loan is not a bona fide third party fee**

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1 unless the appraisal is performed by a person that is licensed
 2 or certified under IC 25-34.1-3-8.
 3 (2) Fees for title examination, abstract of title, title insurance,
 4 property surveys, or similar purposes.
 5 (3) Notary and credit report fees.
 6 (4) Fees for the services provided by a loan broker in
 7 procuring possible business for a creditor if the fees are paid
 8 by the creditor.
 9 (m) As used in this chapter, "branch office" means any fixed
 10 physical location from which a loan broker licensee holds itself out
 11 as engaging in the loan brokerage business.
 12 (n) As used in this chapter, "loan processor or underwriter"
 13 means an individual who:
 14 (1) is employed by a loan broker licensee and acts at the
 15 direction of, and subject to the supervision of, the loan broker
 16 licensee or a licensed principal manager employed by the loan
 17 broker licensee; and
 18 (2) performs solely clerical or support duties on behalf of the
 19 loan broker licensee, including any of the following activities
 20 with respect to a residential mortgage loan application
 21 received by the loan broker licensee:
 22 (A) The receipt, collection, distribution, and analysis of
 23 information commonly used in the processing or
 24 underwriting of a residential mortgage loan.
 25 (B) Communicating with a borrower or potential borrower
 26 to obtain the information necessary for the processing or
 27 underwriting of a residential mortgage loan, to the extent
 28 that the communication does not include:
 29 (i) offering or negotiating loan rates or terms; or
 30 (ii) counseling borrowers or potential borrowers about
 31 residential mortgage loan rates or terms.
 32 (o) As used in this chapter, "real estate brokerage activity"
 33 means any activity that involves offering or providing real estate
 34 brokerage services to the public, including any of the following:
 35 (1) Acting as a real estate broker or salesperson for a buyer,
 36 seller, lessor, or lessee of real property.
 37 (2) Bringing together parties interested in the sale, lease, or
 38 exchange of real property.
 39 (3) Negotiating, on behalf of any party, any part of a contract
 40 concerning the sale, lease, or exchange of real property, other
 41 than in connection with obtaining or providing financing for
 42 the transaction.

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1 **(4) Engaging in any activity for which the person performing**
 2 **the activity is required to be licensed under IC 25-34.1 or the**
 3 **applicable laws of another state.**

4 **(5) Offering to engage in any activity, or to act in any capacity**
 5 **with respect to any activity, described in subdivisions (1)**
 6 **through (4).**

7 **(p) As used in this chapter, "registered mortgage loan**
 8 **originator" means a mortgage loan originator who:**

9 **(1) is an employee of:**

10 **(A) a depository institution (as defined in IC 23-19-1-2(5));**

11 **(B) a subsidiary that is:**

12 **(i) owned and controlled by a depository institution (as**
 13 **defined in IC 23-19-1-2(5)); and**

14 **(ii) regulated by a federal financial institution regulatory**
 15 **agency (as defined in 12 U.S.C. 3350(6)); or**

16 **(C) an institution subject to the supervision of the Farm**
 17 **Credit Administration; and**

18 **(2) is registered with and maintains a unique identifier with**
 19 **the Mortgage Licensing System and Registry.**

20 **(q) As used in this chapter, "residential mortgage loan" means**
 21 **a loan that is secured by a mortgage, deed of trust, or other**
 22 **consensual security interest on real estate in Indiana on which**
 23 **there is located or intended to be constructed a dwelling (as defined**
 24 **in the federal Truth in Lending Act (15 U.S.C. 1602(v)) that is or**
 25 **will be used primarily for personal, family, or household purposes.**

26 **(†) (r) As used in this chapter, "personal information" includes any**
 27 **of the following:**

28 **(1) An individual's first and last names or first initial and last**
 29 **name.**

30 **(2) Any of the following data elements:**

31 **(A) A Social Security number.**

32 **(B) A driver's license number.**

33 **(C) A state identification card number.**

34 **(D) A credit card number.**

35 **(E) A financial account number or debit card number in**
 36 **combination with a security code, password, or access code**
 37 **that would permit access to the person's account.**

38 **(3) With respect to an individual, any of the following:**

39 **(A) Address.**

40 **(B) Telephone number.**

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

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

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- 1 (ii) credit history;
- 2 (iii) credit score;
- 3 (iv) assets;
- 4 (v) liabilities; or
- 5 (vi) employment history.

6 ~~(m)~~ (s) As used in this chapter, personal information is "encrypted"
 7 if the personal information:

- 8 (1) has been transformed through the use of an algorithmic
- 9 process into a form in which there is a low probability of
- 10 assigning meaning without use of a confidential process or key;
- 11 or
- 12 (2) is secured by another method that renders the personal
- 13 information unreadable or unusable.

14 ~~(n)~~ (t) As used in this chapter, personal information is "redacted" if
 15 the personal information has been altered or truncated so that not more
 16 than the last four (4) digits of:

- 17 (1) a Social Security number;
- 18 (2) a driver's license number;
- 19 (3) a state identification number; or
- 20 (4) an account number;

21 are accessible as part of the personal information.

22 SECTION 2. IC 23-2-5-4, AS AMENDED BY P.L.145-2008,
 23 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2009]: Sec. 4. (a) A person may not engage in the loan
 25 brokerage business in Indiana unless the person first obtains a **loan**
 26 **broker** license from the commissioner. Any person desiring to engage
 27 or continue in the loan brokerage business shall apply to the
 28 commissioner for a **loan broker** license under this chapter.

29 (b) An individual may not ~~perform origination activities~~ **act as a**
 30 **mortgage loan originator** in Indiana on behalf of a person licensed or
 31 required to be licensed **as a loan broker** under this chapter unless the
 32 individual first obtains a ~~certificate of registration~~ **mortgage loan**
 33 **originator license** from the commissioner. An individual desiring to
 34 ~~engage in origination activities~~ **act as a mortgage loan originator** on
 35 behalf of a person licensed or required to be licensed **as a loan broker**
 36 under this chapter shall apply to the commissioner for ~~registration~~ a
 37 **mortgage loan originator license** under this chapter.

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

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1 required to be licensed **as a loan broker** under this chapter shall apply
 2 to the commissioner for ~~registration~~ **a principal manager license**
 3 under this chapter.

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

6 (1) The time of application for an initial ~~(A)~~ license. ~~or (B)~~
 7 ~~certificate of registration.~~

8 (2) The time of renewal of a license. ~~or certificate of registration.~~

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

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

14 SECTION 3. IC 23-2-5-5, AS AMENDED BY P.L.145-2008,
 15 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2009]: Sec. 5. (a) An application for **a loan broker** license or
 17 renewal of a **loan broker** license must contain:

18 (1) consent to service of process under subsection ~~(f)~~; **(g)**;

19 (2) evidence of the bond required in subsection ~~(c)~~; **(d)**;

20 (3) an application fee of ~~four two~~ hundred dollars ~~(\$400)~~; **(\$200)**,
 21 plus ~~two one~~ hundred dollars ~~(\$200)~~ **(\$100)** for each ultimate
 22 equitable owner;

23 (4) an affidavit affirming that none of the applicant's ultimate
 24 equitable owners, directors, managers, or officers have been
 25 convicted, in any jurisdiction, of:

26 **(A) any felony within the previous seven (7) years; or**

27 **(B) an offense involving fraud or deception that is punishable**
 28 **by at least one (1) year of imprisonment;**

29 unless **such an affidavit is** waived by the commissioner under
 30 subsection ~~(f)~~; **(h)**;

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

34 (6) the name and ~~registration~~ **license** number for each **mortgage**
 35 **loan** originator to be employed by the licensee;

36 (7) the name and ~~registration~~ **license** number for each principal
 37 manager; and

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

39 (A) The name of the ultimate equitable owner.

40 (B) The address of the ultimate equitable owner, including the
 41 home address of the ultimate equitable owner if the ultimate
 42 equitable owner is an individual.

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- 1 (C) The telephone number of the ultimate equitable owner,
 2 including the home telephone number if the ultimate equitable
 3 owner is an individual.
 4 (D) The ultimate equitable owner's Social Security number and
 5 date of birth, if the ultimate equitable owner is an individual.
- 6 (b) An application for ~~registration licensure~~ **as an a mortgage loan**
 7 originator shall be made on a ~~registration~~ form prescribed by the
 8 commissioner. The application must include the following information
 9 for the individual that seeks to be ~~registered licensed~~ **as an a mortgage**
 10 **loan** originator:
- 11 (1) The name of the individual.
 12 (2) The home address of the individual.
 13 (3) The home telephone number of the individual.
 14 (4) The individual's Social Security number and date of birth.
 15 (5) The name of the:
- 16 (A) **loan broker** licensee; or
 17 (B) applicant for **loan broker** licensure;
 18 for whom the individual seeks to be employed as ~~an a mortgage~~
 19 **loan** originator.
- 20 (6) Consent to service of process under subsection ~~(fr)~~: **(g)**.
 21 (7) Evidence that the individual has completed the education
 22 requirements described in section 21 of this chapter.
 23 (8) An application fee of ~~one hundred fifty~~ dollars ~~(\$100)~~: **(\$50)**.
 24 (9) All:
- 25 (A) registration numbers previously issued to the individual
 26 under this chapter, **if the applicant was registered as an**
 27 **originator or a principal manager under this chapter**
 28 **before July 1, 2009; and**
 29 (B) **license numbers previously issued to the individual**
 30 **under this chapter**, if applicable.
- 31 **(10) Authorization for the commissioner or an agent**
 32 **appointed by the commissioner to obtain a consumer report**
 33 **(as defined in IC 24-5-24-2) concerning the applicant.**
- 34 (c) An application for ~~registration licensure~~ as a principal manager
 35 shall be made on a ~~registration~~ form prescribed by the commissioner.
 36 The application must include the following information for the
 37 individual who seeks to be ~~registered licensed~~ as a principal manager:
- 38 (1) The name of the individual.
 39 (2) The home address of the individual.
 40 (3) The home telephone number of the individual.
 41 (4) The individual's Social Security number and date of birth.
 42 (5) The name of the:

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- 1 (A) **loan broker** licensee; or
- 2 (B) applicant for **loan broker** licensure;
- 3 for whom the individual seeks to be employed as a principal
- 4 manager.
- 5 (6) Consent to service of process under subsection ~~(h)~~: **(g)**.
- 6 (7) Evidence that the individual has completed the education
- 7 requirements described in section 21 of this chapter.
- 8 (8) Evidence that the individual has at least three (3) years of
- 9 experience in the:
- 10 (A) loan brokerage; or
- 11 (B) financial services;
- 12 business.
- 13 (9) An application fee of ~~two one~~ hundred dollars (~~\$200~~): **(\$100)**.
- 14 (10) All:
- 15 (A) registration numbers previously issued to the individual
- 16 **under this chapter, if the applicant was registered as an**
- 17 **originator or a principal manager under this chapter**
- 18 **before July 1, 2009; and**
- 19 (B) **license numbers previously issued to the individual**
- 20 **under this chapter, if applicable.**
- 21 **(11) Authorization for the commissioner or an agent**
- 22 **appointed by the commissioner to obtain a consumer report**
- 23 **(as defined in IC 24-5-24-2) concerning the applicant.**
- 24 ~~(d)~~ The commissioner shall require an applicant for registration as:
- 25 ~~(1)~~ an originator under subsection ~~(b)~~; or
- 26 ~~(2)~~ a principal manager under subsection ~~(c)~~;
- 27 to pass a written examination prepared and administered by the
- 28 commissioner or an agent appointed by the commissioner.
- 29 ~~(e)~~ **(d)** A **loan broker** licensee must maintain a bond satisfactory to
- 30 the commissioner, **which must cover the activities of each licensed**
- 31 **mortgage loan originator and licensed principal manager**
- 32 **employed by the loan broker licensee. The bond must be in one (1)**
- 33 **of the amount of: following amounts, depending on the total amount**
- 34 **of residential mortgage loans originated by the loan broker in the**
- 35 **previous calendar year:**
- 36 **(1) Fifty thousand dollars (\$50,000) which if the total amount of**
- 37 **residential mortgage loans originated by the loan broker in**
- 38 **the previous calendar year was not greater than three million**
- 39 **dollars (\$3,000,000).**
- 40 **(2) One hundred thousand dollars (\$100,000) if the total**
- 41 **amount of residential mortgage loans originated by the loan**
- 42 **broker in the previous calendar year was greater than three**

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1 million dollars (\$3,000,000) but not greater than ten million
 2 dollars (\$10,000,000).
 3 **(3) One hundred fifty thousand dollars (\$150,000) if the total**
 4 **amount of residential mortgage loans originated by the loan**
 5 **broker in the previous calendar year was greater than ten**
 6 **million dollars (\$10,000,000).**

7 **The bond** shall be in favor of the state and shall secure payment of
 8 damages to any person aggrieved by any violation of this chapter by the
 9 licensee **or any licensed mortgage loan originator or licensed**
 10 **principal manager employed by the licensee.**

11 ~~(f)~~ **(e)** The commissioner shall issue a license and license number
 12 to an applicant ~~that for a loan broker license, a mortgage loan~~
 13 ~~originator license, or a principal manager license if the applicant~~
 14 meets the **applicable** licensure requirements ~~of set forth in~~ this
 15 chapter. ~~Whenever the registration provisions of this chapter have been~~
 16 ~~complied with, the commissioner shall issue a certificate of registration~~
 17 ~~and registration number authorizing the registrant to:~~

- 18 ~~(1)~~ **(1)** engage in origination activities; or
- 19 ~~(2)~~ **(2)** act as a principal manager;

20 ~~whichever applies.~~

21 ~~(g)~~ **(f)** Licenses and initial certificates of registration issued by the
 22 commissioner are ~~valid until January 1 of~~ **under this chapter expire**
 23 **on December 31** of the second year after issuance. ~~in which they are~~
 24 **issued.**

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

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

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

39 ~~(k)~~ **(j)** **At the time of application for an initial license under this**
 40 **chapter,** the commissioner shall require each:

- 41 (1) equitable owner, **in the case of an applicant for a loan**
 42 **broker license;**

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1 (2) individual described in subsection (a)(4), **in the case of an**
 2 **applicant for a loan broker license; and**
 3 (3) applicant for ~~registration~~ **licensure** as:
 4 (A) ~~an a mortgage loan~~ **mortgage loan** originator; or
 5 (B) a principal manager;
 6 to submit fingerprints for a national criminal history background check
 7 (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation,
 8 for use by the commissioner in determining whether the equitable
 9 owner, the individual described in subsection (a)(4), or the applicant
 10 should be denied licensure ~~or registration~~ under this chapter for any
 11 reason set forth in section 10(c) **or 10(d)** of this chapter. The equitable
 12 owner, individual described in subsection (a)(4), or applicant shall pay
 13 any fees or costs associated with the fingerprints and background check
 14 required under this subsection. The commissioner may not release the
 15 results of a background check described in this subsection to any
 16 private entity.

17 **(k) Every three (3) years, beginning with the third calendar year**
 18 **following the calendar year in which an initial license is issued**
 19 **under this chapter, the commissioner shall require each:**

- 20 (1) equitable owner, in the case of a loan broker licensee;
- 21 (2) individual described in subsection (a)(4), in the case of a
- 22 loan broker licensee; and
- 23 (3) licensed:
- 24 (A) mortgage loan originator; or
- 25 (B) principal manager;

26 to submit fingerprints for a national criminal history background
 27 check (as defined in IC 10-13-3-12) by the Federal Bureau of
 28 Investigation, for use by the commissioner in determining whether
 29 the equitable owner, the individual described in subsection (a)(4),
 30 or the licensee should be denied continued licensure under this
 31 chapter for any reason set forth in section 10(c) of this chapter.
 32 The equitable owner, individual described in subsection (a)(4), or
 33 licensee shall pay any fees or costs associated with the fingerprints
 34 and background check required under this subsection. The
 35 commissioner may not release the results of a background check
 36 described in this subsection to any private entity.

37 SECTION 4. IC 23-2-5-5.5 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2009]: **Sec. 5.5. (a) The commissioner shall require an applicant**
 40 **for licensure as:**

- 41 (1) a mortgage loan originator under section 5(b) of this
- 42 chapter; or

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- 1 **(2) a principal manager under section 5(c) of this chapter;**
- 2 **to pass a written examination prepared and administered by the**
- 3 **commissioner or an agent appointed by the commissioner.**
- 4 **(b) The written examination required by this section must**
- 5 **measure the applicant's knowledge and comprehension in**
- 6 **appropriate subject areas, including the following:**
- 7 **(1) Ethics.**
- 8 **(2) Federal laws and regulations concerning the origination of**
- 9 **residential mortgage loans.**
- 10 **(3) State laws and rules concerning the origination of**
- 11 **residential mortgage loans.**
- 12 **(c) An individual who answers at least seventy-five percent**
- 13 **(75%) of the questions on the written examination correctly is**
- 14 **considered to have passed the examination.**
- 15 **(d) An individual who does not pass the written examination**
- 16 **may retake the examination up to two (2) additional times, with**
- 17 **each subsequent attempt occurring at least thirty (30) days after**
- 18 **the individual last sat for the examination. If an individual fails**
- 19 **three (3) consecutive examinations, the individual must wait to**
- 20 **retake the examination until at least six (6) months after the**
- 21 **individual sat for the third examination.**
- 22 **(e) Except as provided in subsection (f), if an individual who has**
- 23 **been issued a mortgage loan originator license or a principal**
- 24 **manager license under this chapter:**
- 25 **(1) allows the individual's license to lapse; or**
- 26 **(2) otherwise does not maintain a valid license under this**
- 27 **chapter;**
- 28 **for a period of at least five (5) years, the individual must retake the**
- 29 **written examination required by this section.**
- 30 **(f) This subsection applies to an individual who was registered**
- 31 **as an originator or a principal manager under this chapter before**
- 32 **July 1, 2009. An individual to whom this subsection applies is not**
- 33 **required to take the written examination required by this section**
- 34 **except as follows:**
- 35 **(1) If the individual's registration issued under this chapter**
- 36 **before July 1, 2009, was valid and in effect on June 30, 2009,**
- 37 **the individual is considered licensed under this chapter as of**
- 38 **July 1, 2009. After June 30, 2009, an individual described in**
- 39 **this subdivision is not required to take the written**
- 40 **examination required by this section unless the individual:**
- 41 **(A) allows the individual's license to lapse; or**
- 42 **(B) otherwise does not maintain a valid license under this**

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1 **chapter;**
 2 **for a period of at least five (5) years, beginning at any time**
 3 **after June 30, 2009.**
 4 **(2) If the individual's registration issued under this chapter**
 5 **before July 1, 2009, was not valid and in effect on June 30,**
 6 **2009, the individual is not considered licensed under this**
 7 **chapter as of July 1, 2009. After June 30, 2009, an individual**
 8 **described in this subdivision who seeks to act as a mortgage**
 9 **loan originator or a principal manager in Indiana must:**
 10 **(A) apply to the commissioner for licensure under section**
 11 **5(b) or 5(c) of this chapter, whichever applies; and**
 12 **(B) take the written examination required by this section.**

13 SECTION 5. IC 23-2-5-6, AS AMENDED BY P.L.145-2008,
 14 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2009]: Sec. 6. A **loan broker** licensee may not continue
 16 engaging in the loan brokerage business unless the licensee's license is
 17 renewed ~~biennially~~: **annually**. A **registrant mortgage loan originator**
 18 **licensee or a principal manager licensee** may not continue **acting as:**

- 19 (1) ~~engaging in origination activities;~~ **a mortgage loan**
 20 **originator;** or
 21 (2) ~~acting as a principal manager;~~

22 unless the ~~registrant's certificate of registration~~ **licensee's license** is
 23 renewed ~~biennially~~: **annually**. A licensee **under this chapter** shall
 24 renew its license by filing with the commissioner, at least thirty (30)
 25 days before the expiration of the license, an application containing any
 26 information the commissioner may require to indicate any material
 27 change from the information contained in the applicant's original
 28 application or any previous application. ~~A registrant may renew the~~
 29 ~~registrant's certificate of registration by filing with the commissioner;~~
 30 ~~at least thirty (30) days before the expiration of the registration;~~ an
 31 application containing any information the commissioner may require
 32 to indicate any material change from the information contained in the
 33 applicant's original application or any previous application.

34 SECTION 6. IC 23-2-5-7, AS AMENDED BY P.L.27-2007,
 35 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2009]: Sec. 7. (a) The loan broker regulation account is
 37 created in the state general fund. The money in the loan broker
 38 regulation account may be used only for the regulation of loan brokers,
 39 **mortgage loan originators, and principal managers** under this
 40 chapter. The loan broker regulation account shall be administered by
 41 the treasurer of state. The money in the loan broker regulation account
 42 does not revert to any other account within the state general fund at the

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end of a state fiscal year.

(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the commissioner and shall be deposited with the treasurer of state who shall deposit them in the loan broker regulation account in the state general fund.

(c) All expenses incurred in the administration of this chapter shall be paid from appropriations made from the state general fund. However, costs of investigations **incurred under this chapter shall be paid from**, and civil penalties recovered under this chapter shall be deposited in, the securities division enforcement account created under IC 23-19-6-1(f). The funds in the securities division enforcement account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter.

SECTION 7. IC 23-2-5-9.1, AS ADDED BY P.L.230-2007, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9.1. (a) As used in this section, "appraisal company" means a **person business entity** that: ~~employs or retains the services of one (1) or more real estate appraisers:~~

- (1) performs real estate appraisals on a regular basis for compensation through one (1) or more owners, officers, employees, or agents; or**
- (2) holds itself out to the public as performing real estate appraisals.**

(b) As used in this section, "immediate family", with respect to an individual, refers to:

- (1) the individual's spouse who resides in the individual's household; and
- (2) any dependent child of the individual.

(c) As used in this section, "real estate appraiser" means a person who:

- (1) is licensed as a real estate broker under IC 25-34.1 and performs real estate appraisals within the scope of the person's license; ~~or~~
- (2) holds a real estate appraiser license or certificate issued under ~~IC 25-34.1-8. IC 25-34.1-3-8;~~ **or**
- (3) otherwise performs real estate appraisals in Indiana.**

(d) A person licensed ~~or registered~~ under this chapter, or a person required to be licensed ~~or registered~~ under this chapter, shall not knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate

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1 appraiser with respect to the value of any real estate offered as security
2 for a **residential** mortgage loan.

3 (e) Except as provided in subsection (f): ~~after June 30, 2007:~~

4 (1) a person licensed ~~or registered~~ under this chapter, or a person
5 required to be licensed ~~or registered~~ under this chapter;

6 (2) a member of the immediate family of:

7 (A) a person licensed ~~or registered~~ under this chapter; or

8 (B) a person required to be licensed ~~or registered~~ under this
9 chapter; or

10 (3) a person described in subdivision (1) or (2) in combination
11 with one (1) or more other persons described in subdivision (1) or
12 (2);

13 may not own or control a majority interest in an appraisal company.

14 (f) This subsection applies to a person or combination of persons
15 described in subsection (e) who own or control a majority interest in an
16 appraisal company on June 30, 2007. The prohibition set forth in
17 subsection (e) does not apply to a person or combination of persons
18 described in this subsection, subject to the following:

19 (1) The interest in the appraisal company owned or controlled by
20 the person or combination of persons described in subsection (e)
21 shall not be increased after June 30, 2007.

22 (2) The interest of a person licensed ~~or registered~~ under this
23 chapter, or of a person required to be licensed ~~or registered~~ under
24 this chapter, shall not be transferred to a member of the person's
25 immediate family.

26 (3) If the commissioner determines that any person or
27 combination of persons described in subsection (e) has violated
28 this chapter, the commissioner may order one (1) or more of the
29 persons to divest their interest in the appraisal company. The
30 commissioner may exercise the remedy provided by this
31 subdivision in addition to, or as a substitute for, any other remedy
32 available to the commissioner under this chapter.

33 SECTION 8. IC 23-2-5-10, AS AMENDED BY P.L.145-2008,
34 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2009]: Sec. 10. (a) Whenever it appears to the commissioner
36 that a person has engaged in or is about to engage in an act or a practice
37 constituting a violation of this chapter or a rule or an order under this
38 chapter, the commissioner may investigate and may issue, with a prior
39 hearing if there exists no substantial threat of immediate irreparable
40 harm or without a prior hearing, if there exists a substantial threat of
41 immediate irreparable harm, orders and notices as the commissioner
42 determines to be in the public interest, including cease and desist

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

6 (b) Upon the issuance of an order or notice without a prior hearing
7 by the commissioner under subsection (a), the commissioner shall
8 promptly notify the respondent and, if the subject of the order or notice
9 is a ~~registrant~~, **mortgage loan originator licensee or a principal**
10 **manager licensee**, the **loan broker** licensee for whom the ~~registrant~~
11 **mortgage loan originator or principal manager** is employed:

- 12 (1) that the order or notice has been issued;
- 13 (2) of the reasons the order or notice has been issued; and
- 14 (3) that upon the receipt of a written request the matter will be set
15 ~~down~~ for a hearing to commence ~~within fifteen (15)~~ **not later**
16 **than forty-five (45)** business days after receipt of the request
17 unless the respondent consents to a later date.

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

23 (c) The commissioner may deny an application for an initial or a
24 renewal license, ~~or registration~~; and may suspend or revoke the license
25 of a licensee ~~or the registration of a registrant~~ if the applicant, the
26 licensee, ~~the registrant~~, or an ultimate equitable owner of an applicant
27 **for a loan broker license** or of a **loan broker** licensee:

- 28 ~~(1)~~ fails to maintain the bond required under section 5 of this
29 chapter;
- 30 ~~(2)~~ **(1)** has, within the most recent ten (10) years:
 - 31 (A) been the subject of an adjudication or a determination by:
 - 32 (i) a court with jurisdiction; or
 - 33 (ii) an agency or administrator that regulates securities,
34 commodities, banking, financial services, insurance, real
35 estate, or the real estate appraisal industry;
 - 36 in Indiana or in any other jurisdiction; and
 - 37 (B) been found, after notice and opportunity for hearing, to
38 have violated the securities, commodities, banking, financial
39 services, insurance, real estate, or real estate appraisal laws of
40 Indiana or any other jurisdiction;
- 41 ~~(3)~~ **(2)** except as provided in subsection (d)(1) with respect to
42 **the loan brokerage business**, has:

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- 1 (A) been denied the right to do business in the securities,
- 2 commodities, banking, financial services, insurance, real
- 3 estate, or real estate appraisal industry; or
- 4 (B) had the person's authority to do business in the securities,
- 5 commodities, banking, financial services, insurance, real
- 6 estate, or real estate appraisal industry revoked or suspended;
- 7 by Indiana or by any other state, federal, or foreign governmental
- 8 agency or self regulatory organization;
- 9 ~~(4)~~ (3) is insolvent;
- 10 ~~(5)~~ (4) has violated any provision of this chapter;
- 11 ~~(6)~~ (5) has knowingly filed with the commissioner any document
- 12 or statement that:
- 13 (A) contains a false representation of a material fact;
- 14 (B) fails to state a material fact; or
- 15 (C) contains a representation that becomes false after the filing
- 16 but during the term of a license or certificate of registration as
- 17 provided in subsection ~~(i)~~; (j);
- 18 ~~(7)~~ (6) has ~~(A)~~ been convicted, within ten (10) years before the
- 19 date of the application, renewal, or review, of any crime involving
- 20 fraud or deceit; or ~~(B)~~ had a felony conviction (as defined in
- 21 ~~IC 35-50-2-1(b))~~ within five (5) years before the date of the
- 22 application, renewal, or review;
- 23 ~~(8)~~ (7) if the person is a **loan broker** licensee or a principal
- 24 manager, has failed to reasonably supervise the person's
- 25 **mortgage loan** originators or employees to ensure their
- 26 compliance with this chapter;
- 27 ~~(9)~~ (8) is on the most recent tax warrant list supplied to the
- 28 commissioner by the department of state revenue; or
- 29 ~~(10)~~ (9) has engaged in dishonest or unethical practices in the
- 30 **loan broker brokerage** business, as determined by the
- 31 commissioner.
- 32 **(d) The commissioner shall deny an application for an initial or**
- 33 **a renewal license and shall suspend or revoke the license of a**
- 34 **licensee if the applicant, the licensee, or an ultimate equitable**
- 35 **owner of an applicant for a loan broker license or of a loan broker**
- 36 **licensee:**
- 37 (1) has had a:
- 38 (A) **loan broker license issued under this chapter;**
- 39 (B) **mortgage loan originator license issued under this**
- 40 **chapter;**
- 41 (C) **principal manager license issued under this chapter; or**
- 42 (D) **license that is:**

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- 1 (i) equivalent to a license described in clause (A), (B), or
- 2 (C); and
- 3 (ii) issued by another jurisdiction;
- 4 revoked by the commissioner or the appropriate regulatory
- 5 agency in another jurisdiction, whichever applies;
- 6 (2) has been convicted of or pleaded guilty or nolo contendere
- 7 to a felony in a domestic, foreign, or military court:
- 8 (A) during the seven (7) year period immediately preceding
- 9 the date of the application or review; or
- 10 (B) at any time preceding the date of the application or
- 11 review if the felony involved an act of fraud or dishonesty,
- 12 a breach of trust, or money laundering;
- 13 (3) fails to maintain the bond required under section 5(d) of
- 14 this chapter;
- 15 (4) fails to demonstrate the financial responsibility, character,
- 16 and general fitness necessary to:
- 17 (A) command the confidence of the community in which
- 18 the applicant or licensee engages or will engage in the loan
- 19 brokerage business; and
- 20 (B) warrant a determination by the commissioner that the
- 21 applicant or licensee will operate honestly, fairly, and
- 22 efficiently within the purposes of this chapter;
- 23 (5) has failed to meet the education requirements set forth in
- 24 section 21 of this chapter;
- 25 (6) has failed to pass the written examination required by
- 26 section 5.5 of this chapter; or
- 27 (7) fails to:
- 28 (A) keep or maintain records in accordance with section 18
- 29 of this chapter; or
- 30 (B) allow the commissioner or an agent appointed by the
- 31 commissioner to inspect or examine a loan broker
- 32 licensee's books and records to determine compliance with
- 33 section 18 of this chapter.
- 34 ~~(d)~~ (e) The commissioner may do either of the following:
- 35 (1) Censure:
- 36 (A) a licensee;
- 37 (B) an officer, a director, or an ultimate equitable owner of a
- 38 loan broker licensee; or
- 39 ~~(C)~~ a registrant; or
- 40 ~~(D)~~ (C) any other person;
- 41 who violates or causes a violation of this chapter.
- 42 (2) Permanently bar any person described in subdivision (1) from

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1 being:
 2 (A) licensed ~~or registered~~ under this chapter; or
 3 (B) employed by or affiliated with a person licensed ~~or~~
 4 ~~registered~~ under this chapter;
 5 if the person violates or causes a violation of this chapter.
 6 ~~(e)~~ **(f)** The commissioner may not enter a final order:
 7 (1) denying, suspending, or revoking the license of **an applicant**
 8 **or** a licensee; ~~or the registration of a registrant~~; or
 9 (2) imposing other sanctions;
 10 without prior notice to all interested parties, opportunity for a hearing,
 11 and written findings of fact and conclusions of law. However, the
 12 commissioner may by summary order deny, suspend, or revoke a
 13 license ~~or certificate of registration~~ pending final determination of any
 14 proceeding under this section or before any proceeding is initiated
 15 under this section. Upon the entry of a summary order, the
 16 commissioner shall promptly notify all interested parties that the
 17 summary order has been entered, of the reasons for the summary order,
 18 and that upon receipt by the commissioner of a written request from a
 19 party, the matter will be set for hearing to commence ~~within fifteen~~
 20 ~~(+5)~~ **not later than forty-five (45)** business days after receipt of the
 21 request. If no hearing is requested and none is ordered by the
 22 commissioner, the order remains in effect until it is modified or vacated
 23 by the commissioner. If a hearing is requested or ordered, the
 24 commissioner, after notice of the hearing has been given to all
 25 interested persons and the hearing has been held, may modify or vacate
 26 the order or extend it until final determination.
 27 ~~(f)~~ **(g)** IC 4-21.5 does not apply to a proceeding under this section.
 28 ~~(g)~~ **(h)** If a ~~registrant mortgage loan originator licensee or a~~
 29 **principal manager licensee** seeks to transfer the ~~registrant's~~
 30 ~~registration licensee's license~~ to another **loan broker** licensee who
 31 desires to have the ~~registrant engage in origination activities mortgage~~
 32 **loan originator licensee or principal manager licensee act as a**
 33 **mortgage loan originator** or ~~serve~~ as a principal manager, whichever
 34 applies, the ~~registrant mortgage loan originator licensee or principal~~
 35 **manager licensee** shall, before the ~~registrant conducts origination~~
 36 ~~activities mortgage loan originator licensee or principal manager~~
 37 **licensee acts as a mortgage loan originator** or ~~serves~~ as a principal
 38 manager for the new employer, submit to the commissioner, on a form
 39 prescribed by the commissioner, a ~~registration license~~ application, as
 40 required by section 5 of this chapter.
 41 ~~(h)~~ **(i)** If the employment of a ~~registrant mortgage loan originator~~
 42 **licensee or principal manager licensee** is terminated, whether:

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1 (1) voluntarily by the ~~registrant~~; **mortgage loan originator**
 2 **licensee or principal manager licensee**; or
 3 (2) by the **loan broker** licensee employing the ~~registrant~~;
 4 **mortgage loan originator licensee or principal manager**
 5 **licensee**;
 6 the **loan broker** licensee that employed the ~~registrant mortgage loan~~
 7 **originator licensee or principal manager licensee** shall, not later than
 8 five (5) days after the termination, notify the commissioner of the
 9 termination and the reasons for the termination.
 10 (†)(j) If a material fact or statement included in an application under
 11 this chapter changes after the application has been submitted, the
 12 applicant shall provide written notice to the commissioner of the
 13 change. The commissioner may **deny**, revoke, or refuse to renew ~~the a~~
 14 ~~license or registration of~~ **applied for or held by** any person who:
 15 (1) is required to submit a written notice under this subsection
 16 and fails to provide the required notice within two (2) business
 17 days after the person discovers or should have discovered the
 18 change; or
 19 (2) would not qualify for licensure ~~or registration~~ under this
 20 chapter as a result of the change in a material fact or statement.
 21 SECTION 9. IC 23-2-5-11, AS AMENDED BY P.L.145-2008,
 22 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2009]: Sec. 11. (a) The commissioner may do the following:
 24 (1) Adopt rules under IC 4-22-2 to implement this chapter.
 25 (2) Make investigations and examinations:
 26 (A) in connection with any application for licensure ~~or for~~
 27 ~~registration of a licensee or registrant under this chapter~~ or
 28 with any license ~~or certificate of registration~~ already granted;
 29 or
 30 (B) whenever it appears to the commissioner, upon the basis
 31 of a complaint or information, that reasonable grounds exist
 32 for the belief that an investigation or examination is necessary
 33 or advisable for the more complete protection of the interests
 34 of the public.
 35 (3) Charge as costs of investigation or examination all reasonable
 36 expenses, including a per diem prorated upon the salary of the
 37 commissioner or employee and actual traveling and hotel
 38 expenses. All reasonable expenses are to be paid by the party or
 39 parties under investigation or examination if the party has violated
 40 this chapter.
 41 (4) Issue notices and orders, including cease and desist notices
 42 and orders, after making an investigation or examination under

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1 subdivision (2). The commissioner may also bring an action on
 2 behalf of the state to enjoin a person from violating this chapter.
 3 The commissioner shall notify the person that an order or notice
 4 has been issued, the reasons for it, and that a hearing will be set
 5 ~~within fifteen (15)~~ **not later than forty-five (45)** days after the
 6 commissioner receives a written request from the person
 7 requesting a hearing.

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

11 (6) Hold and conduct hearings.

12 (7) Hear evidence.

13 (8) Conduct inquiries with or without hearings.

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

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

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

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

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

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

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

37 (A) occurred before; or

38 (B) is occurring on;

39 the date the opinion or determination is requested.

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

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- 1 (A) processing applications for:
- 2 (i) licenses ~~and certificates of registration~~ under this chapter;
- 3 and
- 4 (ii) renewals of licenses ~~and certificates of registration~~ under
- 5 this chapter; and
- 6 (B) performing other services that the commissioner
- 7 determines are necessary for the orderly administration of the
- 8 division's licensing ~~and registration~~ system.

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

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

- 29 (1) any evidence the witness gives, or evidence derived from that
- 30 evidence, may not be used in any criminal proceedings against
- 31 that witness, unless the evidence is volunteered by the witness or
- 32 is not responsive to a question; and
- 33 (2) the witness must answer the questions asked and produce the
- 34 items requested.

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

40 (c) In any prosecution, action, suit, or proceeding based upon or
 41 arising out of this chapter, the commissioner may sign a certificate
 42 showing compliance or noncompliance with this chapter by any person.

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1 This shall constitute prima facie evidence of compliance or
 2 noncompliance with this chapter and shall be admissible in evidence
 3 in any action at law or in equity to enforce this chapter.

4 (d) If:

5 (1) a person disobeys any lawful:

6 (A) subpoena issued under this chapter; or

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

10 (2) a witness refuses to:

11 (A) appear when subpoenaed;

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

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

15 the circuit or superior court of the county in which the hearing, inquiry,
 16 or investigation in question is held, if demand is made or if, upon
 17 written petition, the production is ordered to be made, or the
 18 commissioner or a hearing officer appointed by the commissioner, shall
 19 compel compliance with the lawful requirements of the subpoena,
 20 order, or demand, compel the production of the necessary or required
 21 books, papers, records, documents, and other evidence and
 22 information, and compel any witness to attend in any Indiana county
 23 and to testify to any matter about which the witness may lawfully be
 24 interrogated, and to take or subscribe to any oath required.

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

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

30 (1) The commissioner may not require any person ~~exempt from~~
 31 ~~licensure or registration that is not required to be licensed~~ under
 32 this chapter, or any employee or agent of ~~an exempt a person that~~
 33 **is not required to be licensed under this chapter**, to:

34 (A) submit information to; or

35 (B) participate in;

36 the multistate automated licensing system and repository.

37 (2) The commissioner may require a person required under this
 38 chapter to submit information to the multistate automated
 39 licensing system and repository to pay a processing fee considered
 40 reasonable by the commissioner.

41 SECTION 10. IC 23-2-5-16, AS AMENDED BY P.L.230-2007,
 42 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2009]: Sec. 16. (a) Except as provided in ~~subsection~~
2 **subsections (b) and (c)**, a person who knowingly violates this chapter
3 commits a ~~Class B~~ **Class C** felony.

4 **(b) A person who knowingly violates this chapter commits a**
5 **Class B felony if the person damaged by the violation is at least**
6 **sixty (60) years of age.**

7 ~~(b)~~ **(c)** A person commits a Class C felony if the person knowingly
8 makes or causes to be made:

9 (1) in any document filed with or sent to the commissioner or the
10 securities division; or

11 (2) in any proceeding, investigation, or examination under this
12 chapter;

13 any statement that is, at the time and in the light of the circumstances
14 under which it is made, false or misleading in any material respect.

15 SECTION 11. IC 23-2-5-18, AS AMENDED BY P.L.145-2008,
16 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2009]: Sec. 18. (a) Each loan broker agreement shall be given
18 an account number. Each person licensed **as a loan broker** or required
19 to be licensed **as a loan broker** under this chapter shall keep and
20 maintain the following records or their electronic equivalent:

21 (1) A file for each borrower or proposed borrower that contains
22 the following:

23 (A) The name and address of the borrower or any proposed
24 borrower.

25 (B) A copy of the signed loan broker agreement.

26 (C) A copy of any other papers or instruments used in
27 connection with the loan broker agreement and signed by the
28 borrower or any proposed borrower.

29 (D) If a loan was obtained for the borrower, the name and
30 address of the creditor.

31 (E) If a loan is accepted by the borrower, a copy of the loan
32 agreement.

33 (F) The amount of the loan broker's fee that the borrower has
34 paid. If there is an unpaid balance, the status of any collection
35 efforts.

36 (2) All receipts from or for the account of borrowers or any
37 proposed borrowers and all disbursements to or for the account of
38 borrowers or any proposed borrowers, recorded so that the
39 transactions are readily identifiable.

40 (3) A general ledger that shall be posted at least monthly, and a
41 trial balance sheet and profit and loss statement prepared within
42 thirty (30) days of the commissioner's request for the information.

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- 1 (4) A sample of:
- 2 (A) all advertisements, pamphlets, circulars, letters, articles,
- 3 or communications published in any newspaper, magazine, or
- 4 periodical;
- 5 (B) scripts of any recording, radio, or television
- 6 announcement; and
- 7 (C) any sales kits or literature;
- 8 to be used in solicitation of borrowers.
- 9 **(5) A report that lists all residential mortgage loans, including**
- 10 **pending loans and loans that were not closed, originated by**
- 11 **the loan broker. The report required by this subdivision must**
- 12 **be searchable by, or organized according to, the borrower's**
- 13 **last name and must include the following information for each**
- 14 **residential mortgage loan listed:**
- 15 (A) The name and address of the borrower or potential
- 16 borrower.
- 17 (B) The name of the creditor.
- 18 (C) The name of the mortgage loan originator.
- 19 (D) The loan amount.
- 20 (E) The status of the loan, including the date of closing or
- 21 denial by the creditor.
- 22 (F) The interest rate for the loan.
- 23 **The report required by this subdivision may be prepared or**
- 24 **produced by or through the loan broker's loan origination**
- 25 **software or other software used by the loan broker in its loan**
- 26 **brokerage business.**
- 27 (b) The records listed in subsection (a) shall be kept for a period of
- 28 two (2) years in the ~~loan broker's principal~~ **office of the loan broker**
- 29 **in which the loan was originated** and must be separate or readily
- 30 identifiable from the records of any other business that is conducted in
- 31 the office of the loan broker. **If the office in which any records are**
- 32 **required to be kept under this subsection is located outside**
- 33 **Indiana, the records must be:**
- 34 (1) made available at a location that is:
- 35 (A) located in Indiana; and
- 36 (B) accessible to the securities division; or
- 37 (2) maintained electronically and made available to the
- 38 securities division not later than ten (10) business days after
- 39 a request by the securities division to inspect or examine the
- 40 records.
- 41 (c) If a breach of the security of any records:
- 42 (1) maintained by a loan broker under this section; and

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1 (2) containing the unencrypted, unredacted personal information
 2 of one (1) or more borrowers or prospective borrowers;
 3 occurs, the loan broker is subject to the disclosure requirements under
 4 IC 24-4.9-3, unless the loan broker is exempt from the disclosure
 5 requirements under IC 24-4.9-3-4.

6 (d) A person who is ~~(1)~~ licensed or required to be licensed under
 7 this chapter ~~or (2) registered or required to be registered under this~~
 8 ~~chapter~~; may not dispose of the unencrypted, unredacted personal
 9 information of one (1) or more borrowers or prospective borrowers
 10 without first shredding, incinerating, mutilating, erasing, or otherwise
 11 rendering the information illegible or unusable.

12 SECTION 12. IC 23-2-5-18.5, AS ADDED BY P.L.230-2007,
 13 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2009]: Sec. 18.5. Whenever a person licensed ~~or registered~~
 15 under this chapter, or a person required to be licensed ~~or registered~~
 16 under this chapter, has possession of funds belonging to others,
 17 including money received by or on behalf of a prospective borrower,
 18 the person licensed ~~or registered~~ under this chapter, or required to be
 19 licensed ~~or registered~~ under this chapter, shall:

- 20 (1) upon request of the prospective borrower, account for any
 21 funds handled for the prospective borrower;
 22 (2) follow any reasonable and lawful instructions from the
 23 prospective borrower concerning the prospective borrower's
 24 funds; and
 25 (3) return any unspent funds of the prospective borrower to the
 26 prospective borrower in a timely manner.

27 SECTION 13. IC 23-2-5-18.7 IS ADDED TO THE INDIANA
 28 CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 18.7. Each loan broker licensee**
 29 **shall submit, at such times as the commissioner may require,**
 30 **reports of condition to:**

- 31 **(1) the commissioner; and**
 32 **(2) the National Mortgage Licensing System and Registry.**

33 **A report required by this section shall be in such form and contain**
 34 **such information as the commissioner may require.**

35 SECTION 14. IC 23-2-5-20, AS AMENDED BY P.L.145-2008,
 36 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2009]: Sec. 20. (a) A person shall not, in connection with a
 38 contract for the services of a loan broker, either directly or indirectly,
 39 do any of the following:

- 40 (1) Employ any device, scheme, or artifice to defraud.
 41 (2) Make any untrue statements of a material fact or omit to state
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- 1 a material fact necessary in order to make the statements made, in
 2 the light of circumstances under which they are made, not
 3 misleading.
- 4 (3) Engage in any act, practice, or course of business that operates
 5 or would operate as a fraud or deceit upon any person.
- 6 (4) Collect or solicit any consideration, except a bona fide third
 7 party fee, in connection with a loan until the loan has been closed.
- 8 (5) Receive any funds if the person knows that the funds were
 9 generated as a result of a fraudulent act.
- 10 (6) File or cause to be filed with a county recorder any document
 11 that the person knows:
- 12 (A) contains:
- 13 (i) a misstatement; or
 14 (ii) an untrue statement;
 15 of a material fact; or
- 16 (B) omits a statement of a material fact that is necessary to
 17 make the statements that are made, in the light of
 18 circumstances under which they are made, not misleading.
- 19 (7) Knowingly release or disclose the unencrypted, unredacted
 20 personal information of one (1) or more borrowers or prospective
 21 borrowers, unless the personal information is used in an activity
 22 authorized by the borrower or prospective borrower under one (1)
 23 or more of the following circumstances:
- 24 (A) The personal information is:
- 25 (i) included on an application form or another form; or
 26 (ii) transmitted as part of an application process or an
 27 enrollment process.
- 28 (B) The personal information is used to obtain a consumer
 29 report (as defined in IC 24-5-24-2) for an applicant for credit.
- 30 (C) The personal information is used to establish, amend, or
 31 terminate an account, a contract, or a policy, or to confirm the
 32 accuracy of the personal information.
- 33 However, personal information allowed to be disclosed under this
 34 subdivision may not be printed in whole or in part on a postcard
 35 or other mailer that does not require an envelope, or in a manner
 36 that makes the personal information visible on an envelope or a
 37 mailer without the envelope or mailer being opened.
- 38 (8) Engage in any reckless or negligent activity allowing the
 39 release or disclosure of the unencrypted, unredacted personal
 40 information of one (1) or more borrowers or prospective
 41 borrowers. An activity described in this subdivision includes an
 42 action prohibited by section 18(d) of this chapter.

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(9) Knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan, as prohibited by section 9.1(d) of this chapter.

(10) Violate any of the following:

(A) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(B) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(C) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) Any other federal law or regulation concerning residential mortgage lending.

(11) Recommend a residential mortgage loan to a borrower or potential borrower without reasonable grounds to believe that at the time of the closing of the loan the borrower will have the ability to repay the loan as written.

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

SECTION 15. IC 23-2-5-20.5, AS ADDED BY P.L.230-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20.5. (a) A person licensed or required to be licensed as a loan broker under this chapter shall not employ a person to ~~engage in origination activities~~ **act as a mortgage loan originator** unless the person is ~~registered~~ **licensed as an a mortgage loan originator** or a principal manager under this chapter. The ~~registration license of an a mortgage loan~~ **license of an a mortgage loan** originator or a principal manager is not effective during any period in which the **mortgage loan** originator or principal manager is not employed by a loan broker licensed under this chapter.

(b) A person licensed or required to be licensed as a loan broker under this chapter shall not operate any principal or branch office of a loan brokerage business without employing a ~~registered~~ **licensed** principal manager at that location.

(c) The licensed principal manager employed at a principal or branch office of a loan brokerage business shall supervise all employees at that location. If a licensed mortgage loan originator works from a location that is not a principal or branch office of a loan brokerage business, the mortgage loan originator shall be supervised by the principal manager employed at the principal or branch office at which the mortgage loan originator's loan files are

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(d) An individual that acts solely as a loan processor or underwriter shall not represent to the public through:

- (1) advertising; or**
- (2) other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items;**

that the individual may or will perform mortgage loan origination activities or otherwise act as a mortgage loan originator.

SECTION 16. IC 23-2-5-21, AS AMENDED BY P.L.230-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 21. (a) A person applying for an initial license ~~or certificate of registration~~ must provide to the commissioner evidence that during the twenty-four (24) month period immediately preceding the application that the person completed at least ~~twenty-four (24)~~ **twenty (20)** hours of academic instruction, acceptable to the commissioner. ~~related to the loan brokerage business.~~ **The education hours required under this subsection must include the following:**

- (1) Three (3) hours of federal law and regulations concerning residential mortgage lending.**
- (2) Three (3) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.**
- (3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.**
- (4) Two (2) hours of state law and rules concerning residential mortgage lending.**

(b) To maintain a license ~~or registration~~ under this chapter, a person must provide to the commissioner evidence that the person has completed at least ~~six (6)~~ **eight (8) hours of academic instruction that is ~~(1)~~ acceptable to the commissioner and ~~(2)~~ related to the loan brokerage business; during each calendar year after the year in which the license ~~or registration~~ was initially issued. **The education hours required under this subsection must include the following:****

- (1) Three (3) hours of federal law and regulations concerning residential mortgage lending.**
- (2) Two (2) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.**
- (3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.**

~~(b)~~ **(c)** In determining the acceptability of academic instruction the commissioner shall give consideration to approval of a licensee's internal academic instruction programs completed by employees.

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1 (c) (d) In determining the acceptability of an education course, the
2 commissioner may require a fee, in an amount prescribed by the
3 commissioner by rule or order, for the commissioner's review of the
4 course.

5 SECTION 17. IC 23-2-5-22, AS AMENDED BY P.L.145-2008,
6 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2009]: Sec. 22. (a) An appeal may be taken by:

- 8 (1) any person whose application for an initial or a renewal
9 license under this chapter is granted or denied, from any final
10 order of the commissioner concerning the application;
 - 11 (2) any applicant for initial or renewed ~~registration~~ **licensure** as
12 a principal manager or ~~an a mortgage loan~~ originator, from any
13 final order of the commissioner affecting the application;
 - 14 (3) any person against whom a civil penalty is imposed under
15 section 14(a) of this chapter, from the final order of the
16 commissioner imposing the civil penalty; or
 - 17 (4) any person who is named as a respondent, from any final order
18 issued by the commissioner under section 10 or 11 of this chapter;
- 19 to the Marion circuit court or to the circuit or superior court of the
20 county where the person taking the appeal resides or maintains a place
21 of business.

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

- 24 (1) a written notice of the appeal stating the court to which the
25 appeal will be taken and the grounds upon which a reversal of the
26 final order is sought;
- 27 (2) a demand in writing from the appellant for a certified
28 transcript of the record and of all papers on file in the
29 commissioner's office affecting or relating to the order; and
- 30 (3) a bond in the penal sum of five hundred dollars (\$500) to the
31 state of Indiana with sufficient surety to be approved by the
32 commissioner, conditioned upon the faithful prosecution of the
33 appeal to final judgment and the payment of all costs that are
34 adjudged against the appellant.

35 (c) Not later than ten (10) days after the commissioner is served
36 with the items listed in subsection (b), the commissioner shall make,
37 certify, and deliver to the appellant the transcript, and the appellant
38 shall, not later than five (5) days after the date the appellant receives
39 the transcript, file the transcript and a copy of the notice of appeal with
40 the clerk of the court. The notice of appeal serves as the appellant's
41 complaint. The commissioner may appear and file any motion or
42 pleading and form the issue. The cause shall be entered on the trial

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1 calendar for trial de novo and given precedence over all matters
2 pending in the court.

3 (d) The court shall receive and consider any pertinent oral or written
4 evidence concerning the order of the commissioner from which the
5 appeal is taken. If the order of the commissioner is reversed, the court
6 shall in its mandate specifically direct the commissioner as to the
7 commissioner's further action in the matter. The commissioner is not
8 barred from revoking or altering the order for any proper cause that
9 accrues or is discovered after the order is entered. If the order is
10 affirmed, the appellant is not barred after thirty (30) days from the date
11 the order is affirmed from filing a new application if the application is
12 not otherwise barred or limited. During the pendency of the appeal, the
13 order from which the appeal is taken is not suspended but remains in
14 effect unless otherwise ordered by the court. An appeal may be taken
15 from the judgment of the court on the same terms and conditions as an
16 appeal is taken in civil actions.

17 SECTION 18. IC 23-2-5-23, AS ADDED BY P.L.230-2007,
18 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2009]: Sec. 23. ~~Any document~~ **A loan broker agreement**
20 **that is** delivered or required to be delivered by a person licensed or
21 required to be licensed **under this chapter** to a borrower or
22 prospective borrower must contain:

- 23 (1) the license number of the loan broker; and
24 (2) the ~~registration license~~ number of each:
25 (A) **mortgage loan** originator; or
26 (B) principal manager;
27 who had contact with the file.

28 SECTION 19. IC 23-19-4-11, AS ADDED BY P.L.27-2007,
29 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2009]: Sec. 11. (a) Subject to Section 15(h) of the Securities
31 Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the
32 Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted
33 or order issued under this article may establish minimum financial
34 requirements for broker-dealers registered or required to be registered
35 under this article and investment advisers registered or required to be
36 registered under this article.

37 (b) Subject to Section 15(h) of the Securities Exchange Act of 1934
38 (15 U.S.C. 78o(h)) or Section 222(b) of the Investment Advisers Act
39 of 1940 (15 U.S.C. 80b-18a(b)), a broker-dealer registered or required
40 to be registered under this article and an investment adviser registered
41 or required to be registered under this article shall file such financial
42 reports as are required by a rule adopted or order issued under this

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1 article. If the information contained in a record filed under this
2 subsection is or becomes inaccurate or incomplete in a material
3 respect, the registrant shall promptly file a correcting amendment.

4 (c) Subject to Section 15(h) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b-18a):

7 (1) a broker-dealer registered or required to be registered under
8 this article and an investment adviser registered or required to be
9 registered under this article shall make and maintain the accounts,
10 correspondence, memoranda, papers, books, and other records
11 required by rule adopted or order issued under this article;

12 (2) broker-dealer records required to be maintained under
13 subdivision (1) may be maintained in any form of data storage
14 acceptable under Section 17(a) of the Securities Exchange Act of
15 1934 (15 U.S.C. 78q(a)) if they are readily accessible to the
16 commissioner; and

17 (3) investment adviser records required to be maintained under
18 subdivision (1) may be maintained in any form of data storage
19 required by rule adopted or order issued under this article.

20 (d) The records of a broker-dealer registered or required to be
21 registered under this article and of an investment adviser registered or
22 required to be registered under this article are subject to such
23 reasonable periodic, special, or other audits or inspections by a
24 representative of the commissioner, within or outside this state, as the
25 commissioner considers necessary or appropriate in the public interest
26 and for the protection of investors. An audit or inspection may be made
27 at any time and without prior notice. The commissioner may copy, and
28 remove for audit or inspection copies of, all records the commissioner
29 reasonably considers necessary or appropriate to conduct the audit or
30 inspection. The commissioner may assess a reasonable charge for
31 conducting an audit or inspection under this subsection.

32 (e) Subject to Section 15(h) of the Securities Exchange Act of 1934
33 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of
34 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this
35 article may require a broker-dealer or investment adviser that has
36 custody of or discretionary authority over funds or securities of a
37 customer or client to obtain insurance or post a bond or other
38 satisfactory form of security in an amount not to exceed fifty thousand
39 dollars (\$50,000). The commissioner may determine the requirements
40 of the insurance, bond, or other satisfactory form of security. Insurance
41 or a bond or other satisfactory form of security may not be required of
42 a broker-dealer registered under this article whose net capital exceeds,

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1 or of an investment adviser registered under this article whose
2 minimum financial requirements exceed, the amounts required by rule
3 or order under this article. The insurance, bond, or other satisfactory
4 form of security must permit an action by a person to enforce any
5 liability on the insurance, bond, or other satisfactory form of security
6 if instituted within the time limitations in IC 23-19-5-9(g).

7 (f) Subject to Section 15(h) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of
9 1940 (15 U.S.C. 80b-18a), an agent may not have custody of funds or
10 securities of a customer except under the supervision of a broker-dealer
11 and an investment adviser representative may not have custody of
12 funds or securities of a client except under the supervision of an
13 investment adviser or a federal covered investment adviser. A rule
14 adopted or order issued under this article may prohibit, limit, or impose
15 conditions on a broker-dealer regarding custody of funds or securities
16 of a customer and on an investment adviser regarding custody of
17 securities or funds of a client.

18 (g) With respect to an investment adviser registered or required to
19 be registered under this article, a rule adopted or order issued under
20 this article may require that information or other records be furnished
21 or disseminated to clients or prospective clients in this state as
22 necessary or appropriate in the public interest and for the protection of
23 investors and advisory clients.

24 (h) A rule adopted or order issued under this article may require an
25 individual registered under section 2 or 4 of this chapter to participate
26 in a continuing education program approved by the Securities and
27 Exchange Commission and administered by a self-regulatory
28 organization or, in the absence of such a program, a rule adopted or
29 order issued under this article may require continuing education for an
30 individual registered under section 4 of this chapter.

31 (i) The commissioner may annually select as many as twenty-five
32 percent (25%) of all Indiana home and branch offices of registered
33 broker-dealers for completion of compliance reports. Each
34 broker-dealer office that is selected shall file its compliance report
35 according to rules adopted by the commissioner under this article not
36 **more later than ninety (90) forty-five (45)** days after being notified of
37 selection under this subsection. No charges or other examination fees
38 may be assessed against a registered broker-dealer as a result of the
39 examination of a compliance report filed under this subsection unless
40 the examination results in an investigation or examination made under
41 IC 23-19-6-2(a).

42 SECTION 20. IC 23-19-5-8, AS ADDED BY P.L.27-2007,

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1 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2009]: Sec. 8. (a) A person who knowingly violates this
3 article, or a rule adopted under this article, except section 4 of this
4 chapter or the notice filing requirements of IC 23-19-3-2 or
5 IC 23-19-4-5, commits a Class C felony.

6 **(b) A person who knowingly violates section 1 of this chapter:**

7 **(1) while using or taking advantage of; or**

8 **(2) in connection with;**

9 **a relationship that is based on religious affiliation or worship**
10 **commits a Class B felony.**

11 ~~(b)~~ (c) It is the duty of a prosecuting attorney, as well as of the
12 attorney general, to assist the commissioner upon the commissioner's
13 request in the prosecution to final judgment of a violation of the penal
14 provisions of this article. If the commissioner determines that an action
15 based on the securities division's investigations is meritorious:

16 (1) the commissioner or a designee empowered by the
17 commissioner shall refer the facts drawn from the investigation to
18 the prosecuting attorney of the judicial circuit in which the crime
19 may have been committed;

20 (2) the commissioner and the securities division shall assist the
21 prosecuting attorney in prosecuting an action under this section,
22 which may include a securities division attorney serving as a
23 special deputy prosecutor appointed by the prosecuting attorney;

24 (3) a prosecuting attorney to whom facts concerning fraud are
25 referred under subdivision (1) may refer the matter to the attorney
26 general;

27 (4) if a matter has been referred to the attorney general under
28 subdivision (3), the attorney general may:

29 (A) file an information in a court with jurisdiction over the
30 matter in the county in which the offense is alleged to have
31 been committed; and

32 (B) prosecute the alleged offense; and

33 (5) if a matter has been referred to the attorney general under
34 subdivision (3), the commissioner and the securities division shall
35 assist the attorney general in prosecuting an action under this
36 section, which may include a securities division attorney serving
37 as a special deputy attorney general appointed by the attorney
38 general.

39 ~~(c)~~ (d) This article does not limit the power of this state to punish a
40 person for conduct that constitutes a crime under other laws of this
41 state.

42 SECTION 21. IC 23-2-5-19 IS REPEALED [EFFECTIVE JULY 1,

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2 SECTION 22. [EFFECTIVE JULY 1, 2009] (a) The definitions in
3 IC 23-2-5, as amended by this act, apply throughout this
4 SECTION.

5 (b) This SECTION applies to an individual:

6 (1) who was registered under IC 23-2-5, before its amendment
7 by this act, as:

8 (A) an originator; or

9 (B) a principal manager;

10 before July 1, 2009; and

11 (2) whose certificate of registration under IC 23-2-5, before its
12 amendment by this act, was valid and in effect on June 30,
13 2009.

14 (c) An individual to whom this SECTION applies is considered
15 licensed under IC 23-2-5, as amended by this act, as:

16 (1) a mortgage loan originator, in the case of an individual
17 described in subsection (b)(1)(A); or

18 (2) a principal manager, in the case of an individual described
19 in subsection (b)(1)(B);

20 as of July 1, 2009. Notwithstanding IC 23-2-5-4, as amended by this
21 act, an individual to whom this SECTION applies is not required
22 to apply to the commissioner under IC 23-2-5-4, as amended by
23 this act, for a mortgage loan originator license or a principal
24 manager license, whichever applies, and may continue to act as a
25 mortgage loan originator or as a principal manager, subject to
26 subsection (d) and IC 23-2-5-10, as amended by this act.

27 (d) Notwithstanding IC 23-2-5-5(f), as amended by this act, the
28 license of an individual to whom this SECTION applies expires on
29 the later of:

30 (1) December 31, 2009; or

31 (2) the date the individual's certificate of registration issued
32 under IC 23-2-5, before its amendment by this act, would have
33 expired.

34 (e) Notwithstanding IC 23-2-5-5(k), as amended by this act, the
35 commissioner shall require an individual to whom this SECTION
36 applies to submit the fingerprints required under IC 23-2-5-5(k),
37 as amended by this act, every three (3) years beginning with the
38 third calendar year after the first year in which the individual
39 renews the individual's license under IC 23-2-5-6, as amended by
40 this act.

41 (f) Notwithstanding IC 23-2-5-21(b), as amended by this act, the
42 education requirements to maintain a license set forth in

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1 IC 23-2-5-21(b), as amended by this act, first apply to an individual
 2 to whom this SECTION applies in the first calendar year following
 3 the first year in which the individual renews the individual's license
 4 under IC 23-2-5-6, as amended by this act. The education
 5 requirements to maintain a certificate of registration set forth in
 6 IC 23-2-5-21, before its amendment by this act, apply to the
 7 calendar years preceding the first year in which the individual
 8 renews the individual's license under IC 23-2-5-6, as amended by
 9 this act.

10 (g) If an individual's certificate of registration issued under
 11 IC 23-2-5, before its amendment by this act, was not valid and in
 12 effect on June 30, 2009, the individual is not considered licensed
 13 under IC 23-2-5, as amended by this act, as of July 1, 2009. After
 14 June 30, 2009, an individual described in this subsection who seeks
 15 to act as a mortgage loan originator or a principal manager in
 16 Indiana must:

- 17 (1) apply to the commissioner for licensure under
- 18 IC 23-2-5-5(b), as amended by this act, or IC 23-2-5-5(c), as
- 19 amended by this act, whichever applies; and
- 20 (2) take the written examination required by IC 23-2-5-5.5, as
- 21 added by this act.

22 (h) This SECTION expires January 1, 2012.

23 SECTION 23. [EFFECTIVE JULY 1, 2009] (a) The definitions in
 24 IC 23-2-5, as amended by this act, apply throughout this
 25 SECTION.

26 (b) This SECTION applies to a person:

- 27 (1) who was licensed as a loan broker under IC 23-2-5, before
- 28 its amendment by this act; and
- 29 (2) whose license under IC 23-2-5, before its amendment by
- 30 this act, was valid and in effect on June 30, 2009.

31 (c) A person to whom this SECTION applies is considered
 32 licensed as a loan broker under IC 23-2-5, as amended by this act,
 33 as of July 1, 2009. A person to whom this SECTION applies may
 34 continue to engage in the loan brokerage business in Indiana,
 35 subject to subsection (d) and IC 23-2-5-10, as amended by this act.

36 (d) Notwithstanding IC 23-2-5-5(f), as amended by this act, the
 37 license of a person to whom this SECTION applies expires on the
 38 later of:

- 39 (1) December 31, 2009; or
- 40 (2) the date the individual's license issued under IC 23-2-5,
- 41 before its amendment by this act, would have expired.

42 (e) Notwithstanding IC 23-2-5-5(k), as amended by this act, the

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1 commissioner shall require an individual described in:
2 (1) IC 23-2-5-5(k)(1), as amended by this act; or
3 (2) IC 23-2-5-5(k)(2), as amended by this act;
4 to submit the fingerprints required under IC 23-2-5-5(k), as
5 amended by this act, every three (3) years beginning with the third
6 calendar year after the first year in which the licensed loan broker
7 with which the individual is affiliated renews the licensed loan
8 broker's license under IC 23-2-5-6, as amended by this act.
9 (f) If a person's loan broker license issued under IC 23-2-5,
10 before its amendment by this act, was not valid and in effect on
11 June 30, 2009, the person is not considered licensed as a loan
12 broker under IC 23-2-5, as amended by this act, as of July 1, 2009.
13 After June 30, 2009, person described in this subsection who seeks
14 to engage in the loan brokerage business in Indiana must apply to
15 the commissioner for licensure as a loan broker under
16 IC 23-2-5-5(a), as amended by this act.
17 (g) This SECTION expires January 1, 2012.

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