February 12, 2010

ENGROSSED
SENATE BILL No. 328

DIGEST OF SB 328 (Updated February 10, 2010 3:21 pm - DI 101)

Citations Affected: IC 4-21.5; IC 4-22; IC 22-9; IC 23-2; IC 24-4.4; IC 24-4.5; IC 24-5; IC 24-7; IC 26-1; IC 27-7; IC 28-1; IC 28-2; IC 28-5; IC 28-6.1; IC 28-7; IC 28-8; IC 28-10; IC 28-11; IC 28-13; IC 28-14; IC 28-15; IC 32-28; IC 35-45.

Synopsis: Various financial institutions matters. Makes various changes to the laws concerning: (1) financial institutions; (2) debt management companies; (3) pawnbrokers; (4) money transmitters; (5) check cashers; (6) persons licensed under the Uniform Consumer Credit Code; (7) first lien mortgage lenders; and (8) rental purchase agreements. Makes various changes to the laws concerning licensing residential mortgage loan creditors and originators to comply with requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Repeals provisions being superseded by this bill. Repeals provisions under the Uniform Consumer Credit Code concerning the following: (1) A definition index. (2) Revocations of certain licenses. Repeals a provision requiring the display of a license by a debt management company. Repeals a provision concerning reverse mortgage loans made by savings associations and replaces the provision with requirements for reverse mortgage loans made by creditors in first lien mortgage transactions.

Effective: Upon passage; July 1, 2010.

Paul, Lewis

(HOUSE SPONSORS — BARDON, BURTON)

January 11, 2010, read first time and referred to Committee on Insurance and Financial Institutions.
January 26, 2010, amended, reported favorably — Do Pass.
February 1, 2010, read second time, amended, ordered engrossed.
February 2, 2010, engrossed.Read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 9, 2010, read first time and referred to Committee on Financial Institutions.
February 11, 2010, reported — Do Pass.

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February 12, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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ENGROSSED
SENATE BILL No. 328

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

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

SECTION 1. IC 4-21.5-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) Notice shall be given under this section concerning the following:

(1) A safety order under IC 22-8-1.1.

(2) Any order that:

(A) imposes a sanction on a person or terminates a legal right, duty, privilege, immunity, or other legal interest of a person;

(B) is not described in section 4 or 5 of this chapter or IC 4-21.5-4; and

(C) by statute becomes effective without a proceeding under this chapter if there is no request for a review of the order within a specified period after the order is issued or served.

(3) A notice of program reimbursement or equivalent determination or other notice regarding a hospital's reimbursement issued by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning regarding a hospital's year end cost settlement.

(4) A determination of audit findings or an equivalent determination by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning arising from a Medicaid postpayment or concurrent audit of a hospital's Medicaid claims.

(5) A license revocation under:

(A) IC 24-4.4-2;

~~(A)~~ **(B)** IC 24-4.5-3;

~~(B)~~ **(C)** IC 28-1-29;

~~(C)~~ **(D)** IC 28-7-5;

~~(D)~~ **(E)** IC 28-8-4; or

~~(E)~~ **(F)** IC 28-8-5.

(b) When an agency issues an order described by subsection (a), the agency shall give notice to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) Any other information required by law.

(d) An order described in subsection (a) is effective fifteen (15) days after the order is served, unless a statute other than this article specifies a different date or the agency specifies a later date in its order. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of an order described in subsection (a).

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person who has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The

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resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

SECTION 2. IC 4-22-2-37.1, AS AMENDED BY P.L.131-2009, SECTION 1, AS AMENDED BY P.L.160-2009, SECTION 1, AND AS AMENDED BY P.L.177-2009, SECTION 1, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 37.1. (a) This section applies to a rulemaking action resulting in any of the following rules:

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

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

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

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

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

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

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

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

(9) A rule adopted under IC 16-19-3-5 or IC 16-41-2-1 that the executive board of the state department of health declares is necessary to meet an emergency.

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

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

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

(13) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution

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control board under IC 13-15-4-10(4) or to comply with a deadline required by or other date provided by federal law, provided:

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

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

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

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

(16) An emergency rule adopted by the Indiana gaming commission under IC 4-32.2-3-3(b), IC 4-33-4-2, IC 4-33-4-3, IC 4-33-4-14, or IC 4-35-4-2.

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

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

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

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

(21) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

(22) An emergency rule adopted by the Indiana state board of animal health under IC 15-17-10-9.

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

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

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

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

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

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

(29) A rule adopted by the department of financial institutions

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under IC 34-55-10-2.5.

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

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

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

(i) establishing enforcement procedures; and

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

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

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

(31) An emergency rule adopted by the board of the Indiana health informatics corporation under IC 5-31-5-8.

(32) An emergency rule adopted by the **state** *athletic commission under IC 25-9-1-4.5.*

~~*(32)*~~ **(33)** *An emergency rule adopted by the department of child services under IC 31-25-2-21, IC 31-27-2-4, IC 31-27-4-2, or IC 31-27-4-3.*

~~*(32)*~~ **(34)** *An emergency rule adopted by the Indiana real estate commission under IC 25-34.1-2-5(15).*

(35) A rule adopted by the department of financial institutions under IC 24-4.4-1-101 and determined necessary to meet an emergency.

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

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

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

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

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to be submitted under this subsection.

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

(1) accept the rule for filing; and

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

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

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

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

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

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

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

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

(2) IC 13-14-9;

as applicable.

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

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

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

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

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

(k) A rule described in subsection (a)(28) expires on the expiration

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date stated by the board of the Indiana economic development corporation in the rule.

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

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

SECTION 3. IC 22-9-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. As used in this chapter:

(a) "Person" means one (1) or more individuals, partnerships, associations, organizations, limited liability companies, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons.

(b) "Commission" means the civil rights commission created under section 4 of this chapter.

(c) "Director" means the director of the civil rights commission.

(d) "Deputy director" means the deputy director of the civil rights commission.

(e) "Commission attorney" means the deputy attorney general, such assistants of the attorney general as may be assigned to the commission, or such other attorney as may be engaged by the commission.

(f) "Consent agreement" means a formal agreement entered into in lieu of adjudication.

(g) "Affirmative action" means those acts that the commission determines necessary to assure compliance with the Indiana civil rights law.

(h) "Employer" means the state or any political or civil subdivision thereof and any person employing six (6) or more persons within the state, except that the term "employer" does not include:

(1) any nonprofit corporation or association organized exclusively for fraternal or religious purposes;

(2) any school, educational, or charitable religious institution owned or conducted by or affiliated with a church or religious institution; or

(3) any exclusively social club, corporation, or association that is not organized for profit.

(i) "Employee" means any person employed by another for wages or salary. However, the term does not include any individual employed:

(1) by ~~his~~ **the individual's** parents, spouse, or child; or

(2) in the domestic service of any person.

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(j) "Labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment or for other mutual aid or protection in relation to employment.

(k) "Employment agency" means any person undertaking with or without compensation to procure, recruit, refer, or place employees.

(l) "Discriminatory practice" means:

(1) the exclusion of a person from equal opportunities because of race, religion, color, sex, disability, national origin, or ancestry;

(2) a system that excludes persons from equal opportunities because of race, religion, color, sex, disability, national origin, or ancestry;

(3) the promotion of racial segregation or separation in any manner, including but not limited to the inducing of or the attempting to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, or ancestry; or

(4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is committed by a covered entity (as defined in IC 22-9-5-4).

Every discriminatory practice relating to the acquisition or sale of real estate, education, public accommodations, employment, or the extending of credit (as defined in ~~IC 24-4.5-1-301)~~ **IC 24-4.5-1-301.5)** shall be considered unlawful unless it is specifically exempted by this chapter.

(m) "Public accommodation" means any establishment that caters or offers its services or facilities or goods to the general public.

(n) "Complainant" means:

(1) any individual charging on ~~his~~ **the individual's** own behalf to have been personally aggrieved by a discriminatory practice; or

(2) the director or deputy director of the commission charging that a discriminatory practice was committed against a person other than himself or a class of people, in order to vindicate the public policy of the state (as defined in section 2 of this chapter).

(o) "Complaint" means any written grievance that is:

(1) sufficiently complete and filed by a complainant with the commission; or

(2) filed by a complainant as a civil action in the circuit or superior court having jurisdiction in the county in which the alleged discriminatory practice occurred.

The original of any complaint filed under subdivision (1) shall be

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signed and verified by the complainant.

(p) "Sufficiently complete" refers to a complaint that includes:

(1) the full name and address of the complainant;

(2) the name and address of the respondent against whom the complaint is made;

(3) the alleged discriminatory practice and a statement of particulars thereof;

(4) the date or dates and places of the alleged discriminatory practice and if the alleged discriminatory practice is of a continuing nature the dates between which continuing acts of discrimination are alleged to have occurred; and

(5) a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance alleged in the complaint, together with a statement as to the status or disposition of the other action.

No complaint shall be valid unless filed within one hundred eighty (180) days from the date of the occurrence of the alleged discriminatory practice.

(q) "Sex" as it applies to segregation or separation in this chapter applies to all types of employment, education, public accommodations, and housing. However:

(1) it shall not be a discriminatory practice to maintain separate restrooms;

(2) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any other individual in any program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(3) it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one (1) sex only.

(r) "Disabled" or "disability" means the physical or mental condition of a person that constitutes a substantial disability. In reference to employment, under this chapter, "disabled or disability" also means the physical or mental condition of a person that constitutes a substantial disability unrelated to the person's ability to engage in a particular

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occupation.

SECTION 4. IC 23-2-5-3, AS AMENDED BY P.L.156-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) As used in this chapter, "loan broker license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

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

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

(1) any supervised financial organization (as defined in ~~IC 24-4.5-1-301(20)),~~ **IC 26-1-4-102.5),** including a bank, savings bank, trust company, savings association, or credit union;

(2) any other financial institution that is:

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

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

(3) any insurance company;

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

(5) a creditor that is licensed under IC 24-4.4-2-402.

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

(e) As used in this chapter, "mortgage loan origination activities" means performing any of the following activities for compensation or gain in connection with a residential mortgage loan:

(1) Receiving or recording a borrower's or potential borrower's residential mortgage loan application information in any form for use in a credit decision by a creditor.

(2) Offering to negotiate or negotiating terms of a residential mortgage loan.

(f) As used in this chapter, "borrower's residential mortgage loan application information" means the address of the proposed residential real property to be mortgaged and borrower's essential personal and financial information necessary for an informed credit decision to be made on the borrower's mortgage loan application.

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(g) As used in this chapter, "mortgage loan originator" means an individual engaged in mortgage loan origination activities. The term does not include a person who:

(1) performs purely administrative or clerical tasks on behalf of a mortgage loan originator or acts as a loan processor or underwriter;

(2) performs only real estate brokerage activities and is licensed in accordance with IC 25-34.1 or the applicable laws of another state, unless the person is compensated by a creditor, a loan broker, a mortgage loan originator, or any agent of a creditor, a loan broker, or a mortgage loan originator; or

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

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

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

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

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

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

(A) as a mortgage loan originator; or

(B) in financial services;

that is acceptable to the commissioner; and

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

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

(1) a principal manager; and

(2) a mortgage loan originator;

on behalf of a loan broker licensee.

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

(1) Fees for real estate appraisals. However, if the residential

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mortgage loan is governed by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through 3352), the fee for an appraisal performed in connection with the loan is not a bona fide third party fee unless the appraisal is performed by a person that is licensed or certified under IC 25-34.1-3-8.

(2) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.

(3) Notary and credit report fees.

(4) Fees for the services provided by a loan broker in procuring possible business for a creditor if the fees are paid by the creditor.

(n) As used in this chapter, "branch office" means any fixed physical location from which a loan broker licensee holds itself out as engaging in the loan brokerage business.

(o) As used in this chapter, "loan processor or underwriter" means an individual who:

(1) is employed by a loan broker licensee and acts at the direction of, and subject to the supervision of, the loan broker licensee or a licensed principal manager employed by the loan broker licensee; and

(2) performs solely clerical or support duties on behalf of the loan broker licensee, including any of the following activities with respect to a residential mortgage loan application received by the loan broker licensee:

(A) The receipt, collection, distribution, and analysis of information commonly used in the processing or underwriting of a residential mortgage loan.

(B) Communicating with a borrower or potential borrower to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling borrowers or potential borrowers about residential mortgage loan rates or terms.

(p) As used in this chapter, "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including any of the following:

(1) Acting as a real estate broker or salesperson for a buyer, seller, lessor, or lessee of real property.

(2) Bringing together parties interested in the sale, lease, or exchange of real property.

(3) Negotiating, on behalf of any party, any part of a contract

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concerning the sale, lease, or exchange of real property, other than in connection with obtaining or providing financing for the transaction.

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

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

(q) As used in this chapter, "registered mortgage loan originator" means a mortgage loan originator who:

(1) is an employee of:

(A) a depository institution;

(B) a subsidiary that is:

(i) owned and controlled by a depository institution; and

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

(C) an institution regulated by the Farm Credit Administration; and

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

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

(s) As used in this chapter, "personal information" includes any of the following:

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

(2) Any of the following data elements:

(A) A Social Security number.

(B) A driver's license number.

(C) A state identification card number.

(D) A credit card number.

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

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

(A) Address.

(B) Telephone number.

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(C) Information concerning the individual's:
(i) income or other compensation;
(ii) credit history;
(iii) credit score;
(iv) assets;
(v) liabilities; or
(vi) employment history.

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

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

(v) As used in this chapter, "depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(w) As used in this chapter, "state licensed mortgage loan originator" means any individual who:
(1) is a mortgage loan originator;
(2) is not an employee of:
(A) a depository institution;
(B) a subsidiary that is:
(i) owned and controlled by a depository institution; and
(ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or
(C) an institution regulated by the Farm Credit Administration;
(3) is licensed by a state or by the Secretary of the United States Department of Housing and Urban Development under Section 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289); and
(4) is registered as a mortgage loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing

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System and Registry.

(x) As used in this chapter, "unique identifier" means a number or other identifier that:

(1) permanently identifies a mortgage loan originator; and

(2) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the federal financial institution regulatory agencies to facilitate:

(A) the electronic tracking of mortgage loan originators; and

(B) the uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators.

SECTION 5. IC 24-4.4-1-102, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

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

(a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and

(b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, and regulations.

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

(4) A reference to a federal law in this article is a reference to the law in effect December 31, ~~2008.~~ **2009.**

SECTION 6. IC 24-4.4-1-202, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 202. This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(4) **Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5),** a first lien mortgage transaction made:

(a) in compliance with the requirements of; and

(b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

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

~~(5) A supervised financial organization.~~

~~(6) An operating subsidiary that is majority owned, directly or indirectly, by a supervised financial organization to the extent the operating subsidiary is regulated by the chartering authority of the supervised financial organization.~~

(5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the federal Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(6) An extension of credit originated by:

(a) a depository institution;

(b) subsidiaries that are:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal banking agency; or

(c) an institution regulated by the Farm Credit Administration.

(7) **Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5),** a credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.

(8) A first lien mortgage transaction originated by a registered mortgage loan originator, when acting for an entity described in subsection (6). However, a privately insured state chartered credit union shall comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the federal Safe and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

(9) An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.

(10) An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.

(11) Unless the attorney is compensated by:

(a) a lender;

(b) a mortgage broker;

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(c) another mortgage loan originator; or

(d) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (a) through (c);

a licensed attorney who negotiates the terms of a mortgage transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.

~~(8)~~ **(12)** Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises.

SECTION 7. IC 24-4.4-1-202.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 202.5. (1) If a person licensed or required to be licensed under this article also engages in the loan brokerage business, the person's loan brokerage business is subject to the following sections of the Indiana Code and any rules adopted to implement these sections:**

(a) IC 23-2-5-9.

(b) IC 23-2-5-9.1.

(c) IC 23-2-5-15.

(d) IC 23-2-5-16.

(e) IC 23-2-5-17.

(f) IC 23-2-5-18.

(g) IC 23-2-5-18.5.

(h) IC 23-2-5-20.

(i) IC 23-2-5-23, except for IC 23-2-5-23(2)(B).

(j) IC 23-2-5-24.

(2) Loan broker business transactions engaged in by persons licensed or required to be licensed under this article are subject to examination by the department and to the examination fees described in IC 24-4.4-2-402(7)(c). The department may cooperate with the securities division of the office of the secretary of state in the department's examination of loan broker business transactions and may use the securities division's examiners to conduct examinations.

SECTION 8. IC 24-4.4-1-204 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 204. In the department's examination and regulatory activities related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of entities that, in addition to conducting business regulated under this article, also**

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conduct a loan brokerage business subject to IC 23-2-5.

SECTION 9. IC 24-4.4-1-301, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

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

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

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

(3) "Agricultural products" includes agricultural, horticultural, viticultural, dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, any products raised or produced on farms, and any products processed or manufactured from products raised or produced on farms.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(5) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

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

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

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

(d) either the debt is payable in installments or a finance charge is made; and

(e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars ($50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

~~(1)~~ **(6)** "Credit" means the right granted by a creditor to a debtor

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to defer payment of debt or to incur debt and defer its payment.

~~(2)~~ **(7)** "Creditor" means a person:

(a) that ~~regularly~~ engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

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

The term does not include a person described in subsection ~~(13)(a)~~ **33(a)** in a tablefunded transaction. **A creditor may be an individual, a limited liability company, a sole proprietorship, a partnership, a trust, a joint venture, a corporation, an unincorporated organization, or other form of entity, however organized.**

~~(3)~~ **(8)** "Department" refers to the members of the department of financial institutions.

(9) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

~~(4)~~ **(10)** "Director" refers to the director of the department of financial institutions **or the director's designee.**

~~(5)~~ **(11)** "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(12) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(13) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

~~(6)~~ **(14)** "First lien mortgage transaction" means:

(a) a loan; ~~in which a first~~ **or**

(b) a consumer credit sale;

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that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage, ~~or~~ a land contract, **or another equivalent consensual security interest** which constitutes a first lien ~~is created or retained against land upon which there is~~ **on** a dwelling ~~that is or will be used by the debtor primarily for personal, family, or household purposes.~~ **or residential real estate.**

(15) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person licensed as a creditor under this article.

~~(7)~~ **(18)** "Loan" includes:

(a) the creation of debt by:

(i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or

(ii) the extension of credit by a person who ~~regularly~~ engages as a seller in credit transactions primarily secured by an interest in land;

(b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(c) the forbearance of debt arising from a loan.

(19) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(20) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the

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information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or 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 can or will perform any of the activities of a mortgage loan originator.

(21) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.5 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.5, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of a creditor, a loan broker, or another mortgage loan originator described in items (i) through (iii);

a person or entity that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

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

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(23) "Mortgage transaction" means:

(a) a loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage, a land contract, or another equivalent consensual security interest on a dwelling or residential real estate.

(24) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(25) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

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

~~(8)~~ **(27)** "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

~~(9)~~ **(28)** "Person" includes an individual or an organization.

~~(10) A person is "regularly engaged" as a creditor in first lien mortgage transactions in Indiana if:~~

~~(a) the person acted as a creditor in first lien mortgage transactions in Indiana more than five (5) times in the preceding calendar year; or~~

~~(b) the person did not meet the numerical standards set forth in subdivision (a) in the preceding calendar year, but has or will meet the numerical standards set forth in subdivision (a) in the current calendar year.~~

(29) "Principal" of a mortgage transaction means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and

(b) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (a).

(30) "Real estate brokerage activity" means any activity that

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involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(31) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(32) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

~~(11)~~ **(33)** "Revolving first lien mortgage transaction" means ~~an arrangement between a creditor and a debtor~~ **a first lien mortgage transaction** in which:

(a) the creditor permits the debtor to obtain advances from time to time;

(b) the unpaid balances of principal, ~~credit service charges, or loan~~ finance charges, and other appropriate charges are debited to an account; and

(c) the debtor has the privilege of paying the balances in installments.

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~~(12) "Supervised financial organization" means a person that is:~~
~~(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States that authorizes the person to make loans and to receive deposits, including deposits into a savings, share, certificate, or deposit account, and~~
~~(b) subject to supervision by an official or agency of a state or of the United States.~~

~~(13)~~ **(34)** "Tablefunded" means a transaction in which:
(a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and
(b) the transaction is assigned simultaneously to the mortgage creditor providing the funding not later than one (1) business day after the funding of the transaction.

(35) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

SECTION 10. IC 24-4.4-2-201, AS AMENDED BY P.L.52-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 201. (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:
(a) one hundred dollars ($100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and
(b) the greater of:
(i) one hundred dollars ($100); or
(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;
if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction,

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that:

(a) is closed after June 30, 2009; and

(b) has an interest rate that is subject to change at one (1) or more times during the term of the first lien mortgage transaction.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the debtor a prepayment fee or penalty.

(3) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. **Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the first lien mortgage transaction unless the creditor, servicer, or creditor's agent obtains:**

(a) the following statement: "The debtor remains liable for any amount still owed under the first lien mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 11. IC 24-4.4-2-401, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 401. **(1)** Unless a person subject to this article has first obtained a license **under this article** from the department **and**

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annually maintains the license, the person shall not ~~regularly~~ engage in Indiana as a creditor in first lien mortgage transactions. ~~However, this article does not require an employee of a person that is licensed under this article to obtain a license to make a first lien mortgage loan.~~ **A separate license under this article is required for each legal entity that engages in Indiana as a creditor in first lien mortgage transactions. However, a separate license under this article is not required for each branch of a legal entity licensed under this article.**

(2) Each:

(a) creditor licensed under this article; and

(b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

shall register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, and associated with, a licensed creditor, or an entity exempt from licensing under this article, in the NMLSR in order to originate loans.

(3) Applicants for a license under this article must apply for the license in the form prescribed by the director. Each form:

(a) must contain content as set forth by rule, instruction, or procedure of the director; and

(b) may be changed or updated as necessary by the director to carry out the purposes of this article.

(4) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

(a) collect and maintain records; and

(b) process transaction fees or other fees related to licensees or other persons subject to this article.

(5) For the purpose of participating in the NMLSR, the director or the department may:

(a) waive or modify, in whole or in part, by rule or order, any of the requirements of this article; and

(b) establish new requirements as reasonably necessary to participate in the NMLSR.

SECTION 12. IC 24-4.4-2-402, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage transactions. Applications must be made as prescribed by the director.

(2) A license may not be issued unless the department finds that the

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professional training and experience, financial responsibility, character, and fitness of:

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

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

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

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

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

(a) the time of application;

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

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

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

(a) criminal background checks, **as described in section 402.1 of this chapter,** including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);

(b) credit histories **as described in section 402.2 of this chapter;** ~~and~~

(c) surety bond requirements as described in section 402.3 of this chapter;

(d) a review of licensure actions in Indiana and in other states; and

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

~~If the director requests a national criminal history background check under subdivision (a) for an individual described in subsection (2), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (3). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.~~

(5) For purposes of this section and in order to reduce the points

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of contact that the director has to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

~~(5)~~ **(6)** The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

~~(6)~~ **(7)** Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

~~(7)~~ **(8)** The applicant shall pay the following fees at the time designated by the department:

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

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

(c) Examination fees as established by the department under IC 28-11-3-5.

~~(8)~~ **(9)** A fee as established by the department under IC 28-11-3-5 may be charged for each day ~~the annual renewal fee~~ **a fee** under subsection ~~(7)(b) is~~ **8(b) or 8(c) is** delinquent.

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

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

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

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

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

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

~~(i) submit information to; or~~

~~(ii) participate in;~~

~~the automated central licensing system and repository.~~

~~(b) Information stored in the automated central licensing system~~

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~~and repository is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) obtain information;~~

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

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

~~if the information may be obtained from the director or the~~

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~~director's designee under any law.~~

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

SECTION 13. IC 24-4.4-2-402.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 402.1. (1) When the director requests a national criminal history background check under section 402(4)(a) of this chapter for an individual described in section 402(2) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 402(3) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

(2) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

SECTION 14. IC 24-4.4-2-402.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 402.2. (1) If the director requests a credit report for an individual described in section 402(2) of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.**

(2) The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to obtain an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(3) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:

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(a) Bankruptcies filed within the last ten (10) years.

(b) Current outstanding judgments, except judgments solely as a result of medical expenses.

(c) Current outstanding tax liens or other government liens or filings.

(d) Foreclosures within the past three (3) years.

(e) A pattern of serious delinquent accounts within the past three (3) years.

SECTION 15. IC 24-4.4-2-402.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 402.3. (1) Each:**

(a) creditor; and

(b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

must be covered by a surety bond in accordance with this section.

(2) A surety bond must:

(a) provide coverage for each creditor and each entity exempt from licensing under this article that employs a mortgage loan originator in an amount as prescribed in subsection (4); and

(b) be in a form prescribed by the director.

(3) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director.

(5) If an action is commenced on the surety bond of a creditor or an entity exempt from licensing under this article as described in subsection (1), the director may require the filing of a new bond.

(6) A creditor or an entity exempt from licensing under this article as described in subsection (1) shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section.

SECTION 16. IC 24-4.4-2-402.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 402.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:**

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

(b) issuing unique identifiers for licensees and entities exempt from licensing under this article that employ a licensed

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mortgage loan originator under this article; and

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

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.

(5) The director shall establish a process in which licensees may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3 and IC 28-1-2-30. A person may not:

(i) obtain information from the NMLSR, unless the person is authorized to do so by statute;

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

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

(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

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

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under this article.

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

(i) to the director; or

(ii) by the director;

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

(d) Information provided to the NMLSR is subject to IC 4-1-11.

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

(i) obtain information;

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

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

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

(f) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies, as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

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(ii) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

(i) confidential supervisory information; or

(ii) any information or material described in subdivision (f);

and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 402(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

(i) require review of; and

(ii) make available;

the audited financial statements of the NMLSR.

SECTION 17. IC 24-4.4-2-403, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 403. **(1) A license issued under this article must be renewed through the NMLSR not later than December 31 of each calendar year. The minimum standards for license renewal for a creditor include the following:**

(a) The creditor has continued to meet the surety bond requirement under section 402.3 of this chapter.

(b) The creditor has filed the creditor's annual call report in a manner that satisfies section 405(4) of this chapter.

(c) The creditor has paid all required fees for renewal of the license.

(d) The creditor and individuals described in section 402(2) of this chapter continue to meet all the standards for licensing contained in section 402 of this chapter.

~~(1)~~ **(2)** A license issued by the department authorizing a person to engage in first lien mortgage transactions **as a creditor** under this article may be revoked **or suspended** by the department if the person

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fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

~~(2)~~ **(3)** A person whose license is revoked **or suspended** under this section may do either of the following:

(a) Pay all delinquent fees and apply for ~~a new~~ **reinstatement of the** license.

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

SECTION 18. IC 24-4.4-2-404, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 404. (1) The department may issue to a person licensed to engage in first lien mortgage transactions **as a creditor** an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. The order must state the place and time for a meeting with the department that is not less than ten (10) days from the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated:

(i) this article or any rule, ~~or~~ order, **or guidance document** lawfully adopted or issued under this article; or

(ii) any other state or federal law, regulation, or rule applicable to first lien mortgage transactions; ~~or~~

(b) the licensee does not meet the licensing qualifications contained in section 402 of this chapter; or

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

(2) Except as provided in section 403 of this chapter, a revocation or suspension of a license is not authorized under this article unless before instituting proceedings to suspend or revoke the license, the department gives notice to the licensee of the conduct or facts that warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the department finds that probable cause for revocation of a

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

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of the revocation or suspension. Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to engage in first lien mortgage transactions **as a creditor** may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this paragraph does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) If the director determines it to be in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

~~(6)~~ **(7)** A revocation, suspension, or relinquishment of a license does not impair or affect the obligation of any preexisting lawful contract between:

(a) the person whose license has been revoked, suspended, or relinquished; and

(b) any debtor.

~~(7)~~ **(8)** The department may reinstate a license **or** terminate a suspension ~~or grant~~ **of** a ~~new~~ license to a person whose license has been revoked or suspended if the director determines that, at the time the determination is made, there is no fact or condition that exists that clearly would justify the department in refusing to ~~grant~~ **reinstate** a license.

~~(8)~~ **(9)** If the director:

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

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

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

SECTION 19. IC 24-4.4-2-404.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 404.1. (1) If the director determines that a director, an officer, or an employee of a creditor:**

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

(b) has committed fraudulent or unconscionable conduct; or

(c) has been convicted of or has pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction;

the director, subject to subsection (2), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any creditor, or an order both removing the person and prohibiting the person's participation.

(2) A violation, practice, or breach specified in subsection (1) is subject to the authority of the director under subsection (1) if the director finds any of the following:

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

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

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

(3) A person who:

(a) has been convicted of; or

(b) has pleaded guilty or nolo contendere to;

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

(4) A creditor that willfully permits a person to serve the creditor in violation of subsection (3) is subject to a civil penalty of five hundred dollars ($500) for each day the violation continues.

SECTION 20. IC 24-4.4-2-404.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 404.2. (1) A notice issued under this chapter must:**

(a) be in writing;

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(b) contain a statement of the facts constituting the alleged practice, violation, or breach;

(c) state the facts alleged in support of the violation, practice, or breach;

(d) state the director's intention to enter an order under section 404.4(1) of this chapter;

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

(f) be delivered to the officer, director, or employee concerned;

(g) specify the procedures that must be followed to initiate a hearing to contest the facts alleged; and

(h) if the director suspends or prohibits an officer, a director, or an employee of the creditor from participating in the affairs of the creditor, as described in subsection (5), include a statement of the suspension or prohibition.

(2) If a hearing is requested not later than ten (10) days after service of the written notice, the department shall hold a hearing concerning the alleged practice, violation, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The department, based on the evidence presented at the hearing, shall enter a final order under section 404.4 of this chapter.

(3) If no hearing is requested within the time specified in subsection (2), the director may proceed to issue a final order under section 404.4 of this chapter on the basis of the facts set forth in the written notice.

(4) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any licensee under this article without the approval of the director.

(5) The director may, for the protection of the creditor or the interests of its customers, suspend from office or prohibit from participation in the affairs of the creditor an officer, a director, or an employee of a creditor who is the subject of a written notice served by the director under section 404.1(1) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice under section 404.1(1) of this chapter. Unless stayed by a court in a proceeding authorized by subsection (6), the suspension or prohibition remains in effect pending completion of the proceedings related to the notice served under section 404.1(1) of this chapter and until the effective date of an order entered by the department under subsection (2) or the

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director under subsection (3). Copies of the notice shall also be served upon the creditor or affiliate of which the person is an officer, a director, or an employee.

(6) Not more than fifteen (15) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the creditor or affiliate under subsection (5), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings related to the written notice served under section 404.1(1) of this chapter, and the court may stay the suspension or prohibition.

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

SECTION 21. IC 24-4.4-2-404.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 404.3. If the director enters into a consent to a final order under section 404.4 of this chapter with a creditor, a director, an officer, or an employee, the director is not required to issue and serve a notice of charges upon the creditor, director, or officer under section 404.1 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges. The director shall provide a copy of the consent order to the board of directors of the creditor.**

SECTION 22. IC 24-4.4-2-404.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 404.4. (1) If, after a hearing described in section 404.2(2) of this chapter, the department finds that the conditions specified in section 404.1 of this chapter have been established, the department may issue a final order. If a hearing is not requested within the time specified in section 404.2(2) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 404.1(1) of this chapter.**

(2) Unless the director has entered into a consent agreement described in section 404.3 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(3) In a final order under this section, the department or the director, as appropriate, may order one (1) or more of the following with respect to an officer, a director, or an employee of a creditor:

(a) The removal of the officer, director, or employee from the

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person's office, position, or employment.

(b) A prohibition against any participation by the officer, director, or employee in the conduct of the affairs of any creditor.

(c) If the subject of the order is an officer or a director of a creditor, and subject to section 404.6 of this chapter, the imposition of a civil penalty not to exceed fifteen thousand dollars ($15,000) for each practice, violation, or act that:

(i) is described in section 404.1 of this chapter; and

(ii) is found to exist by the department or the director.

(4) A final order shall be issued in writing not later than ninety (90) days after conclusion of a hearing held under section 404.2(2) of this chapter, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(5) If the officer, director, or employee does not appear individually or by an authorized representative at a hearing held under section 404.2(2) of this chapter, the officer, director, or employee is considered to have consented to the issuance of a final order.

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

SECTION 23. IC 24-4.4-2-404.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 404.5. (1) A final order issued under this chapter is effective on the eleventh day after service of the order. However, a final order issued upon consent under section 404.3 of this chapter is effective at the time specified in the order.**

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

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

SECTION 24. IC 24-4.4-2-404.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 404.6. (1) The director or the department, as appropriate, shall consider the following factors in determining the amount of a civil penalty that should be assessed against a director or an officer in a final order issued under section 404.4(3)(c) of this chapter:**

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

(b) The gravity of the practice, violation, or act.

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(c) The history of previous practices, violations, or acts.

(d) The economic benefit derived by the individual from the practice, violation, or act.

(e) Other factors that justice requires.

(2) A creditor may not indemnify a director or an officer for a civil penalty imposed in a final order under section 404.4(3)(c) of this chapter.

(3) Civil penalties shall be deposited in the financial institutions fund established by IC 28-11-2-9.

SECTION 25. IC 24-4.4-2-404.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 404.7. The director may enforce any of the following by applying for appropriate relief to a court having jurisdiction:**

(a) An order issued under this chapter.

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

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

SECTION 26. IC 24-4.4-2-405, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 405. (1) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee is complying with this article. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any first lien mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but in the case of a revolving first lien mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction.

(2) ~~A licensee~~ **The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.**

(3) Every licensee shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance and policies issued by the director is not a violation of IC 28-1-2-30.

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(4) Each:

(a) creditor licensed by the department under this article; and

(b) entity that is exempt from licensing under this article and that employs one (1) or more licensed mortgage originators;

shall submit to the NMLSR reports of condition, which must be in a form and must contain information as required by the NMLSR.

(5) Each:

(a) creditor licensed by the department under this article; and

(b) entity exempt from licensing under this article that employs licensed mortgage loan originators;

shall file with the department **additional** financial statements relating to all first lien mortgage transactions originated by the ~~licensee. The licensee shall file the financial statements~~ **licensed creditor or the exempt entity** as required by the department, but not more frequently than annually, in the form prescribed by the department.

~~(3)~~ **(6)** A ~~licensee~~ **licensed creditor** shall file notification with the department if the licensee:

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

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

(c) files for bankruptcy or reorganization; or

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

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

~~(4)~~ **(7)** A licensee shall file notification with the department if ~~a key~~ **the licensee or any director, executive** officer, or ~~director~~ **manager** of the licensee ~~(a) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or (b)~~ has been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction. **The licensee shall file the notification required by this subsection** not later than thirty (30) days after the date of the event described in this subsection.

(8) A licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee has had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization. The licensee shall file the

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

SECTION 27. IC 24-4.4-2-503 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 503. A creditor in a first lien mortgage transaction that:**

(1) qualifies as a home equity conversion mortgage under the Federal Housing Administration's program; or

(2) otherwise constitutes a reverse mortgage;

shall provide the debtor with a pamphlet that is approved by the department and that describes the availability of reverse mortgage counseling services provided by housing counselors approved by the Secretary of the United States Department of Housing and Urban Development, as provided in 24 CFR 206.41(a). The debtor must receive the counseling described in this section and present the creditor with the certificate described in 24 CFR 206.41(c) before the creditor may make a first lien mortgage transaction described in this section to the debtor.

SECTION 28. IC 24-4.4-3-102, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 102. This chapter applies to a person that ~~regularly~~ engages as a creditor in first lien mortgage transactions in Indiana. **The authority of this chapter remains in effect, whether a licensee, individual, or person subject to this article acts or claims to act under any licensing or registration law of Indiana or claims to act without such authority.**

SECTION 29. IC 24-4.4-3-104, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 104. (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

(a) Training, operating, and policy manuals.

(b) Minutes of:

(i) management meetings; and

(ii) other meetings.

(c) Financial records, credit files, and data bases.

(d) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena

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witnesses, **and** compel the attendance of witnesses, **including officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of licensees, and other individuals or persons subject to this article. The department may also** adduce evidence and require the production of any matter that is relevant to an investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records concerning any transaction subject to this article shall be retained for two (2) years after the making of the final entry relating to the first lien mortgage transaction, but in the case of a revolving first lien mortgage transaction the two (2) year period is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

(a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a first lien mortgage transaction.

(b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.4-2-201.

(c) The authority to investigate complaints filed with the department by debtors.

(3) The department shall be given free access to the records wherever the records are located. **In making any examination or investigation authorized by this article, the director may control access to any documents and records of the licensee or person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where the documents are usually kept. During the period of control, a licensee or person may not remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or person have been, or are, at risk of being altered or destroyed for purposes of concealing a violation of this article, the licensee or person shall have access to the documents or records as necessary to conduct the licensee's or person's ordinary business affairs.** If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where they are

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maintained. The department may designate comparable officials of the state in which the records are located to inspect the records on behalf of the department.

(4) Upon a person's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice by the department to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

(5) The department shall not make public:

(a) the name or identity of a person whose acts or conduct the department investigates under this section; or

(b) the facts discovered in the investigation.

However, this subsection does not apply to civil actions or enforcement proceedings under this article.

(6) If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:

(a) discontinue receiving one (1) or more services from the person; or

(b) otherwise cease conducting business with the person.

SECTION 30. IC 24-4.4-3-104.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 104.5. To carry out the purposes of this section, the director may:**

(a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing:

(i) resources;

(ii) standardized or uniform methods or procedures; and

(iii) documents, records, information, or evidence obtained

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under this section;

(c) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensee, an individual, or a person subject to this article;

(d) accept and rely on examination or investigation reports made by other government officials within or outside Indiana; and

(e) accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

SECTION 31. IC 24-4.4-3-104.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 104.6. It is a violation of this article for a person or individual subject to this article to:**

(a) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(b) engage in any unfair or deceptive practice toward any person;

(c) obtain property by fraud or misrepresentation;

(d) solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this article may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(e) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(f) conduct any business covered by this article without holding a valid license as required under this article, or assist or aid and abet any person in the conduct of business under this article without a valid license as required under this article;

(g) fail to make disclosures as required by this article or regulation adopted under this article and any other applicable state or federal law regulation;

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(h) fail to comply with this article or rules adopted under this article, or fail to comply with any other state or federal law, rule, or regulation, applicable to any business authorized or conducted under this article;

(i) make, in any manner, any false or deceptive statement or representation, with regard to the rates, points, or other financing terms or conditions for a mortgage transaction, or engage in bait and switch advertising;

(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(k) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage transaction, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(l) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this article;

(m) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(n) fail to account truthfully for money belonging to a party to a mortgage transaction; or

(o) knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information subject to examination under this article.

SECTION 32. IC 24-4.4-3-105, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 105. Except as otherwise provided, IC 4-21.5-3 governs any action taken by the department under this chapter or IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the adoption of rules by the department under this article. **All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County.** However, if the department determines that an emergency exists, the department may adopt any rules authorized by this article under IC 4-22-2-37.1.

SECTION 33. IC 24-4.4-3-106, AS ADDED BY P.L.145-2008,

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SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 106. (1) After notice and hearing, the department may order a creditor or a person acting on ~~the creditor's behalf~~ **behalf of the creditor** to cease and desist from engaging in violations of this article. In any civil court with jurisdiction:

(a) a respondent aggrieved by an order of the department may obtain judicial review of the order; and

(b) the department may obtain an order of the court for the enforcement of the department's order.

A proceeding for review or enforcement under this subsection shall be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Not later than thirty (30) days after service of a petition for review upon the department under subsection (1), or within such further time as the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order that is the subject of the review is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After conducting a hearing on the matter, the court may:

(a) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record;

(b) grant any temporary relief or restraining order the court considers just; and

(c) enter an order:

(i) enforcing;

(ii) modifying;

(iii) enforcing as modified; or

(iv) setting aside;

in whole or in part, the order of the department; or

(d) enter an order remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of:

(a) adducing additional specified and material evidence; and

(b) seeking a finding upon such evidence;

upon good cause shown for the failure to previously adduce this evidence before the department.

(4) The jurisdiction of the court is exclusive and the court's final

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judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:

(a) the order was issued in compliance with this section;

(b) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and

(c) the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 111 of this chapter.

SECTION 34. IC 24-4.4-3-108, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 108. The department may bring a civil action to restrain a person from violating this article **or other state or federal law, rule, or regulation** and for other appropriate relief.

SECTION 35. IC 24-4.4-3-111, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 111. (1) The department may bring a civil action against a creditor or a person acting on ~~the creditor's~~ behalf **of the creditor** to recover a civil penalty for willfully violating this article. If the court finds that the defendant has engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars ($5,000). A civil penalty may not be imposed under this subsection:

(a) for violations of this article occurring more than two (2) years before the action is brought; or

(b) for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

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

(3) If the department determines, after notice and opportunity

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to be heard, that a person has willfully violated this article, the department may, in addition to or instead of all other remedies available under this section, order restitution against the person subject to this article for a violation of this article.

SECTION 36. IC 24-4.5-1-102, AS AMENDED BY P.L.182-2009(ss), SECTION 370, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 102. ~~Purposes; Rules of Construction~~ (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

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

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

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

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

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

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

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

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

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

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2008.~~ **2009.**

(5) This article applies to a transaction if the director determines that the transaction:

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

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

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

(6) The authority of this article remains in effect, whether a licensee, an individual, or a person subject to this article acts or

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claims to act under any licensing or registration law of this state, or claims to act without such authority.

(7) A violation of a state or federal law, regulation, or rule applicable to consumer credit transactions is a violation of this article.

(8) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to mortgage transactions.

SECTION 37. IC 24-4.5-1-108 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 108. ~~Effect of Article on Powers of Organizations~~ = (1) This article prescribes maximum charges for all creditors, except lessors and those excluded (IC 24-4.5-1-202), extending consumer credit, including consumer credit sales ~~(IC 24-4.5-2-104),~~ **(IC 24-4.5-1-301.5(8)),** consumer loans ~~(IC 24-4.5-3-104),~~ **(IC 24-4.5-1-301.5(9)),** and consumer related sales and loans (IC 24-4.5-2-602 and IC 24-4.5-3-602), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial loan and investment companies, and commercial banks and trust companies, this article displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) and IC 24-4.6-1, this article does not displace limitations on powers of credit unions, savings banks, savings or building and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2), this article does not displace:

(a) limitations on powers of ~~supervised financial organizations (IC 24-4.5-1-301)~~ **depository institutions (IC 24-4.5-1-301.5)** with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan ~~secured by an interest in land,~~ **that is a mortgage transaction,** or other similar restrictions designed to protect deposits; or

(b) limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

SECTION 38. IC 24-4.5-1-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 109. All persons licensed on October 1, 1971, under:

(1) IC 24-5-4 (before its repeal on October 1, 1971);

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(2) IC 28-7-4 (before its repeal on October 1, 1971);
(3) IC 28-7-2 (before its repeal on October 1, 1971); **or**
(4) IC 28-5-1-4;

are licensed to make supervised loans under this article, **subject to the renewal provisions contained in this article.** All provisions of this article apply to the persons previously licensed or authorized. The department may deliver evidence of licensing to the persons previously licensed or authorized.

SECTION 39. IC 24-4.5-1-202, AS AMENDED BY P.L.181-2006, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 202. This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.
(2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
(3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
(4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
(5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.
(6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
(7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
(8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.
(9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).
(10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.
(11) **Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5),** a loan made:
(A) in compliance with the requirements of; and

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(B) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

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

(12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq).

SECTION 40. IC 24-4.5-1-204 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 204. In examinations or other regulatory activities conducted by the department and related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of individuals who, in addition to conducting business regulated under this article, also conduct a loan broker business subject to IC 23-2-5.**

SECTION 41. IC 24-4.5-1-301.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 301.5. In addition to definitions appearing in subsequent chapters in this article, the following definitions apply throughout this article:**

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

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

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

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish,

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and any and all products raised or produced on farms and any processed or manufactured products thereof.

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

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:

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

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

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

(d) fees for notarizing deeds and other documents;

(e) appraisal fees; and

(f) fees for credit reports.

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

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

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

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

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

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

(d) either the debt is payable in installments or a finance charge is made; and

(e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars ($50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement or except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6-101), a sale of an interest in land which is a first lien

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mortgage transaction.

(9) "Consumer loan" means a loan made by a person regularly engaged in the business of making loans in which:

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

(b) the debt is primarily for a personal, family, or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either:

(i) the principal does not exceed fifty thousand dollars ($50,000); or

(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

Except as described in IC 24-4.5-3-105 of this chapter, the term does not include a first lien mortgage transaction.

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

(11) "Creditor" means a person:

(a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and

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

(12) "Depository institution" has the meaning set forth in the federal Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(13) "Director" means the director of the department of financial institutions or the director's designee.

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

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary,

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commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(16) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(17) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) "First lien mortgage transaction" means:

(a) a loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage, a land contract, or another equivalent consensual security interest that constitutes a first lien on a dwelling or residential real estate.

(19) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(20) "Individual" means a natural person.

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

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

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

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

(22) "Licensee" means a person licensed as a creditor under this article.

(23) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(24) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person

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licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public through advertising or 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 can or will perform any of the activities of a mortgage loan originator.

(25) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.5 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.5, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) other mortgage loan originator; or

(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to

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timeshare plans (as defined in 11 U.S.C. 101(53D)).

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

(27) "Mortgage transaction" means:

(a) a loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage, a land contract, or another equivalent consensual security interest on a dwelling or residential real estate.

(28) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(29) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(30) "Official fees" means:

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

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

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

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

(33) "Person" includes an individual or an organization.

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

(a) the spouse of the individual;

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

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

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

(35) "Person related to" with respect to an organization means:

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

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

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

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

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

(37) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(38) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

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(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(39) "Regularly engaged" means a person who extends consumer credit:

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

(b) at least one (1) time for a mortgage transaction secured by a dwelling;

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

(40) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

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

(42) "Subordinate lien mortgage transaction" means:

(a) a loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage, a land contract, or another equivalent consensual security interest that constitutes a subordinate lien on a dwelling or residential real estate.

(43) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

SECTION 42. IC 24-4.5-2-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 102. This chapter applies to consumer credit sales, including home solicitation sales, and consumer leases. In addition, IC 24-4.5-2-601 through IC 24-4.5-2-605 apply to consumer related sales. **Licensing under IC 24-4.5-3-502.1**

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applies to consumer credit sales that are subordinate lien mortgage transactions.

SECTION 43. IC 24-4.5-2-202, AS AMENDED BY P.L.217-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 202. (1) In addition to the credit service charge permitted by IC 24-4.5-2-201 through IC 24-4.5-2-210, a seller may contract for and receive any of the following additional charges in connection with a consumer credit sale:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to the buyer and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the credit service charge. With respect to any additional charge not specifically provided for in this section, to be a permitted charge under this subsection the seller must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the buyer. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the buyer and is reasonable in relation to the benefits.

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

(e) Annual participation fees assessed in connection with a revolving charge account. Annual participation fees must:

(i) be reasonable in amount;

(ii) bear a reasonable relationship to the seller's costs to maintain and monitor the charge account; and

(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss:

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller and stating that the buyer may choose the person, subject to the seller's

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reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific, affirmative, written indication of the desire to do so after written disclosure of the cost.

(3) With respect to a ~~debt secured by an interest in land,~~ **subordinate lien mortgage transaction,** the following closing costs, if the costs are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

(a) fees for title examination, abstract of title, title insurance, property surveys, or similar purposes;

(b) fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents;

(c) notary and credit report fees;

(d) amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge; and

(e) appraisal fees.

SECTION 44. IC 24-4.5-2-209, AS AMENDED BY P.L.145-2008, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 209. ~~Right to Prepay~~ = (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

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

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

(A) one hundred dollars ($100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage

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servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

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

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

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

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

(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. **Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the mortgage transaction unless the creditor, servicer, or creditor's agent obtains:**

(a) the following statement: "The debtor remains liable for any amount still owed under the mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

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acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 45. IC 24-4.5-2-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 301. (1) For purposes of this section, "consumer credit sale" includes the sale of an interest in land which is a **first lien** mortgage transaction if the sale is otherwise a consumer credit sale ~~(IC 24-4.5-2-104).~~ **(IC 24-4.5-1-301.5(8)).**

(2) The seller shall disclose to the buyer to whom credit is extended with respect to a consumer credit sale, and the lessor shall disclose to the lessee with respect to a consumer lease, the information required by the Federal Consumer Credit Protection Act.

(3) For purposes of subsection (2), disclosures shall not be required on a consumer credit sale if the transaction is exempt from the Federal Consumer Credit Protection Act.

SECTION 46. IC 24-4.5-2-407 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 407. (1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if, in the case of a ~~security interest in land~~ **subordinate lien mortgage transaction,** the debt secured is one thousand dollars ($1,000) or more, or, in the case of a security interest in goods the debt secured is three hundred dollars ($300) or more. Except as provided with respect to cross-collateral (IC 24-4.5-2-408), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

(3) A security interest taken in violation of this section is void.

(4) The amounts of one thousand dollars ($1,000) and three hundred dollars ($300) in subsection (1) are subject to change pursuant to the

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provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

SECTION 47. IC 24-4.5-3-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 102. This chapter applies to consumer loans, including ~~regulated and~~ supervised loans. In addition, IC 24-4.5-3-601 through IC 24-4.5-3-605 apply to consumer related loans. **The licensing provisions of this chapter apply to consumer credit sales under IC 24-4.5-2 that are subordinate lien mortgage transactions.**

SECTION 48. IC 24-4.5-3-105, AS AMENDED BY P.L.90-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 105. Unless the loan is made subject to IC 24-4.5-3 by agreement (IC 24-4.5-3-601), and except with respect to disclosure (IC 24-4.5-3-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-3-209), **providing property tax information (IC 24-4.5-3-701),** and powers and functions of the department (IC 24-4.5-6-104), "consumer loan" does not include a ~~loan primarily secured by an interest in land which is a~~ **first lien** mortgage transaction. ~~(as defined in IC 24-4.5-1-301(17)).~~

SECTION 49. IC 24-4.5-3-209, AS AMENDED BY P.L.145-2008, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

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

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

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

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

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

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

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

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

(b) the greater of:

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

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

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

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

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

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has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. **Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the mortgage transaction unless the creditor, servicer, or creditor's agent obtains:**

(a) the following statement: "The debtor remains liable for any amount still owed under the mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 50. IC 24-4.5-3-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 301. (1) For the purposes of this section, "consumer loan" includes a loan ~~secured primarily by an interest in land which is a~~ **that is a first lien** mortgage transaction if the loan is otherwise a consumer loan ~~(IC 24-4.5-3-104).~~ **(IC 24-4.5-1-301.5(9)).**

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

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

SECTION 51. IC 24-4.5-3-502, AS AMENDED BY P.L.57-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 502. ~~Authority to Make Consumer Loans - Unless~~ **(1)** A person **that** is a: ~~supervised financial organization or a collection agency licensed under IC 25-11-1 or has first obtained a license from the department, the person shall not regularly engage in this state in any of the following:~~

~~(1) Making consumer loans.~~

~~(2) Taking assignments of consumer loans.~~

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~~(3) Undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans. However, a person may collect and enforce for three (3) months without a license if the person promptly applies for a license and the person's application has not been denied.~~

(a) depository institution;

(b) subsidiary that is owned and controlled by a depository institution; or

(c) credit union service organization;

may engage in the making of consumer loans that are not mortgage transactions without obtaining a license under this article.

(2) A collection agency licensed under IC 25-11-1 may engage in:

(a) taking assignments of consumer loans in Indiana; and

(b) undertaking direct collection of payments from or enforcement of rights in Indiana against debtors arising from consumer loans;

without obtaining a license under this article.

(3) A person that does not qualify under subsection (1) or (2) shall acquire and retain a license under this article in order to regularly engage in Indiana in the following actions with respect to consumer loans that are not mortgage transactions:

(a) The making of consumer loans.

(b) Taking assignments of consumer loans.

(c) Undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans.

(4) A separate license under this article is required for each legal entity that engages in Indiana in any activity described in subsection (3). However, a separate license under this article is not required for each branch of a legal entity licensed under this article to perform an activity described in subsection (3).

SECTION 52. IC 24-4.5-3-502.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 502.1. (1) Unless a person:**

(a) is a depository institution;

(b) is a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency;

(c) is an institution regulated by the Farm Credit Administration; or

(d) has first obtained, and subsequently retains, a license from

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the department under this article;

the person shall not regularly engage in Indiana as a creditor in subordinate lien mortgage transactions, take assignments in Indiana of subordinate lien mortgage transactions, or undertake in the direct collection of payments from or enforcement of rights against debtors in Indiana arising from subordinate lien mortgage transactions.

(2) Each:

(a) creditor licensed by the department under this article; and

(b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

shall register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, and associated with, a licensed creditor or an exempt entity described under subdivision (b) in the NMLSR in order to originate loans.

(3) Applicants for a license must apply for a license under this chapter in a form prescribed by the director. Each form:

(a) must contain content as set forth by rule, instruction, or procedure of the director; and

(b) may be changed or updated as necessary by the director to carry out the purposes of this article.

(4) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

(a) collect and maintain records; and

(b) process transaction fees or other fees;

related to licensees or other persons subject to this article.

(5) For the purpose of participating in the NMLSR, the director or the department may:

(a) waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this article; and

(b) establish new requirements as reasonably necessary to participate in the NMLSR.

SECTION 53. IC 24-4.5-3-503, AS AMENDED BY P.L.90-2008, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 503. ~~License to Make Consumer Loans—~~ (1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions.

(2) A license shall not be issued unless the department finds that the **professional training and experience,** financial responsibility,

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character, and fitness of:

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

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

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

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

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

(a) the time of application;

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

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

(4) Evidence of compliance with this section **concerning a person licensed under section 502 of this chapter** may include **and under section 502.1 of this chapter must include:**

(a) criminal background checks **as described in section 503.1 of this chapter,** including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);

(b) credit histories **as described in section 503.2 of this chapter;** ~~and~~

(c) surety bond requirements as described in section 503.3 of this chapter;

(d) a review of licensure actions in Indiana and other states; and

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

~~If the director requests a national criminal history background check under subdivision (a) for an individual described in subsection (2), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (3). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.~~

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(5) For purposes of this section and in order to reduce the points of contact that the director may have to maintain under this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

~~(5)~~ **(6)** The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

~~(6)~~ **(7)** Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

~~(7)~~ **(8)** The applicant shall pay the following fees at the time designated by the department:

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

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

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

~~(8)~~ **(9)** A fee as established by the department under IC 28-11-3-5 may be charged for each day ~~the annual renewal fee~~ **a fee** under ~~subsection (7)(c) is~~ **subsection (8)(b) or (8)(c) is** delinquent.

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

(10) The licensee may deduct the fees required under subsection (8)(a) and (8)(c) from the filing fees paid under IC 24-4.5-6-203.

~~(10)~~ **(11)** A ~~loan~~ license issued under this section is not assignable or transferable.

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

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

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

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

~~(a) The director or the director's designee may not require any person exempt from licensure under this article, or any employee~~

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~~or agent of an exempt person, to:~~

~~(i) submit information to; or~~

~~(ii) participate in;~~

~~the automated central licensing system and repository.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) obtain information;~~

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

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

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

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

SECTION 54. IC 24-4.5-3-503.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 503.1. (1) When the director requests a national criminal history background check under section 503(4)(a) of this chapter for an individual described in section 503(2) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 503(3) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

(2) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

SECTION 55. IC 24-4.5-3-503.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 503.2. (1) If the director requests a credit report for an individual described in section 503(2) of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.**

(2) The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to

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obtain an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(3) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:

(a) Bankruptcies filed within the last ten (10) years.

(b) Current outstanding judgments, except judgments solely as a result of medical expenses.

(c) Current outstanding tax liens or other government liens or filings.

(d) Foreclosures within the past three (3) years.

(e) A pattern of serious delinquent accounts within the past three (3) years.

SECTION 56. IC 24-4.5-3-503.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 503.3. (1) Each:**

(a) creditor licensed by the department under this article; and

(b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

must be covered by a surety bond in accordance with this section.

(2) A surety bond:

(a) must provide coverage for:

(i) each creditor described in subsection (1)(a); and

(ii) each exempt entity described in subsection (1)(b);

in an amount as prescribed in subsection (4); and

(b) must be in a form as prescribed by the director.

(3) The director may adopt rules or guidance documents with respect to the requirements for surety bonds as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director.

(5) If an action is commenced on the surety bond of a creditor or an entity exempt from licensing under this article as described in subsection (1), the director may require the filing of a new bond.

(6) A creditor or an entity exempt from licensing under this article as described in subsection (1) shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section.

SECTION 57. IC 24-4.5-3-503.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2010]: **Sec. 503.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:**

(a) processing applications and renewals for licenses under section 502.1 of this chapter;

(b) issuing unique identifiers for licensees under section 502.1 of this chapter and for entities exempt from licensing under this article that employ licensed mortgage loan originators; and

(c) performing other services that the director determines necessary for the orderly administration of the department's licensing system under section 502.1 of this chapter.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article related to subordinate lien mortgage transactions to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article related to subordinate lien mortgage transactions to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against licensees under section 502.1 of this chapter to the NMLSR.

(5) The director shall establish a process in which persons licensed in accordance with section 502.1 of this chapter may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the NMLSR unless the person is authorized to do so by statute;

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

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

(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential

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under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

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

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

(i) to the director; or

(ii) by the director;

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

(d) Information provided to the NMLSR is subject to IC 4-1-11.

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

(i) obtain information;

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

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

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

(f) Except as otherwise provided in the federal Housing and Economic Recovery Act of 2008, Public Law 110-289, Section 1512, the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter

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agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) subpoena, discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

(i) confidential supervisory information; or

(ii) any information or material described in subdivision (f);

and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person licensed in accordance with section 502.1 of this chapter and described in section 503(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

(i) require review of; and

(ii) make available;

the audited financial statements of the NMLSR.

SECTION 58. IC 24-4.5-3-503.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 503.6. (1) A license issued under this article must be renewed not later than December 31 of each calendar year. A license issued under section 502.1 of this chapter must be renewed through the NMLSR. The minimum standards**

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for license renewal for a creditor include the following:

(a) If the creditor is licensed in accordance with section 502 of this chapter, the creditor has:

(i) paid all required fees for renewal of the license; and

(ii) filed all reports and information required by the director.

(b) If the creditor is licensed under section 502.1 of this chapter, the following:

(i) The creditor has continued to meet the surety bond requirement under section 503.3 of this chapter.

(ii) The creditor has filed the creditor's annual call report in a manner that satisfies section 505(4) of this chapter.

(iii) The creditor has paid all required fees for renewal of the license.

(iv) The creditor and individuals described in section 503(2) of this chapter continue to meet all the standards for licensing established under section 503 of this chapter.

(v) The creditor has filed all reports and information required by the director.

(2) A license issued by the department authorizing a person to engage as a creditor in consumer loans or consumer credit sales under this article may be suspended by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 503(8)(c) of this chapter;

not later than sixty (60) days after the due date.

(3) A person whose license is suspended under this section may do either of the following:

(a) Pay all delinquent fees and apply for reinstatement of the license.

(b) Appeal the suspension to the department for an administrative review under IC 4-21.5-3. The license remains in force pending the decision resulting from the hearing under IC 4-21.5-3.

SECTION 59. IC 24-4.5-3-504, AS AMENDED BY P.L.90-2008, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 504. ~~Revocation or Suspension of License—~~ (1) The department may issue to a person licensed to make consumer loans **or engage in consumer credit sales that are mortgage transactions** an order to show cause why the license should not be revoked or suspended for a period determined by the department. The order shall

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state the place and time for a meeting with the department that is no less than ten (10) days from the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

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

(b) the licensee has repeatedly and willfully violated **any other state or** federal consumer credit laws, ~~or~~ **rules, or regulations;**

(c) the licensee does not meet the licensing qualifications under section 503 of this chapter; or

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

(2) Except as provided in ~~section 503.5~~ **section 503.6(2) and 503.6(3)** of this chapter, no revocation or suspension of a license is lawful unless prior to institution of proceedings by the department notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

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

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

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

(6) If the director determines it is in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

~~(6)~~ **(7)** No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

~~(7)~~ **(8)** The department may reinstate a license **or** terminate a

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suspension ~~or grant a new~~ **of a** license to a person whose license has been revoked or suspended if **the director determines that, at the time the determination is made,** no fact or condition then exists which clearly would have justified the department in refusing to ~~grant~~ **reinstate** a license.

~~(8)~~ **(9)** If the director:

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

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

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

SECTION 60. IC 24-4.5-3-505, AS AMENDED BY P.L.90-2008, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 505. ~~Records; Annual Reports—~~(1) Every ~~licensee~~ **creditor required to be licensed under this article** shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the department to determine whether the licensee is complying with the provisions of this article. The record keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever located. The records pertaining to any loan shall be retained for two (2) years after making the final entry relating to the loan, but in the case of a revolving loan account the two (2) years is measured from the date of each entry. A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained by the person.

(2) The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.

(3) Every licensee that engages in mortgage transactions shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance documents and policies issued by the director is not a violation of IC 28-1-2-30.

(4) Each:

(a) creditor that is licensed by the department under this article and that engages in mortgage transactions; and

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(b) entity that is exempt from licensing under this article and that employs one (1) or more licensed mortgage loan originators;

shall submit to the NMLSR a call report, which must be in the form and contain information the NMLSR requires.

~~(2)~~ **(5)** Every ~~licensee~~ **creditor required to be licensed under this article** shall file with the department a composite report as required by the department, but not more frequently than annually, in the form prescribed by the department relating to all consumer loans made by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states. Information contained in the reports shall be confidential and may be published only in composite form. The department may impose a fee in an amount fixed by the department under IC 28-11-3-5 for each day that a ~~licensee~~ **creditor** fails to file the report required by this subsection.

~~(3)~~ **(6)** ~~Every licensee~~ **A creditor required to be licensed under this article** shall file notification with the department if the licensee:

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

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

(c) files for bankruptcy or reorganization; or

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

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

~~(4)~~ **(7)** Every licensee shall file notification with the department if ~~an individual described in section 503(2)(b) or 503(2)(c) of this chapter:~~ **the licensee or any director, executive officer, or manager of the licensee** ~~(a) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or (b)~~ has been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction. **The licensee shall file the notification required by this subsection** not later than thirty (30) days after the date of the event described in this subsection.

SECTION 61. IC 24-4.5-4-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 102. (1) Except as provided in subsection (2), this chapter applies to insurance provided or to be provided in relation to a consumer credit sale ~~(IC 24-4.5-2-104),~~ **(IC 24-4.5-1-301.5(8)),** a consumer lease (IC 24-4.5-2-106), or a consumer loan ~~(IC 24-4.5-3-104).~~

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(IC 24-4.5-1-301.5(9)).

(2) The provision on cancellation by a creditor (IC 24-4.5-4-304) applies to loans the primary purpose of which is the financing of insurance. No other provision of this chapter applies to insurance so financed.

(3) This chapter supplements and does not repeal IC 27-8-4 (the credit insurance act). The provisions of this article concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of IC 27-8-4 do not apply to creditors and debtors.

SECTION 62. IC 24-4.5-5-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 201. For purposes of the provisions on civil liability for violation of disclosure provisions (IC 24-4.5-5-203) and on debtor's right to rescind certain transactions (IC 24-4.5-5-204):

(1) consumer credit sale includes a sale ~~of an interest in land which is a mortgage transaction~~ **that is a first lien mortgage transaction** if the sale is otherwise a consumer credit sale; ~~(IC 24-4.5-2-104),~~ and

(2) consumer loan includes a loan ~~primarily secured by an interest in land which is a mortgage transaction~~ **that is a first lien mortgage transaction** if the loan is otherwise a consumer loan. ~~(IC 24-4.5-3-105).~~

SECTION 63. IC 24-4.5-5-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 301. (1) A lender who knowingly makes charges in excess of those permitted by the provisions of this article commits a Class A misdemeanor.

(2) A person ~~other than a supervised financial organization,~~ who knowingly engages in the business of making consumer loans without a license in violation of the provisions of this article applying to authority to make consumer loans (IC 24-4.5-3-502 **and IC 24-4.5-3-502.1)** commits a Class A misdemeanor.

(3) A person who knowingly:

(a) engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors; and

(b) undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this article concerning notification (IC 24-4.5-6-202) or payment of fees (IC 24-4.5-6-203);

commits a Class A infraction.

SECTION 64. IC 24-4.5-6-102 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 102. (a) IC 24-4.5-6-101 through IC 24-4.5-6-117 apply to persons who in this state:

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (IC 24-4.5-2-602) and consumer related loans (IC 24-4.5-3-602); or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

(b) For purposes of IC 24-4.5-6-101 through IC 24-4.5-6-117:

(1) "Consumer credit sale" includes a sale ~~of an interest in land which is a mortgage transaction~~ **that is a first lien mortgage transaction** if the sale is otherwise a consumer credit sale.

(2) "Consumer loan" includes a loan ~~secured by an interest in land which is a mortgage transaction~~ **that is a first lien mortgage transaction** if the loan is otherwise a consumer loan.

SECTION 65. IC 24-4.5-6-105 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 105. ~~Administrative Powers with Respect to Supervised Financial Organizations —~~ (1) With respect to ~~supervised financial organizations,~~ **depository institutions,** the powers of examination and investigation ~~(IC 24-4.5-3-506 and~~ (IC 24-4.5-6-106) and administrative enforcement (IC 24-4.5-6-108) shall be exercised by the department. The department may, at its discretion, accept any examination of any financial institution made by a federal authority in lieu of the examination made under the provisions of this article. All other powers of the department under this article may be exercised by ~~him~~ **the director** with respect to a ~~supervised financial organization.~~ **depository institution.**

(2) If the department receives a complaint or other information concerning noncompliance with this article by a ~~supervised financial organization, he~~ **depository institution, the director** shall inform the official or agency having supervisory authority over the organization concerned. The department may request information about ~~supervised financial organizations~~ **depository institutions** from the officials or agencies supervising them.

(3) The department and any official or agency of this state having supervisory authority over a ~~supervised financial organization~~ **depository institution** are authorized and directed to consult and assist one another in maintaining compliance with this article. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is

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empowered to take the action.

SECTION 66. IC 24-4.5-6-106, AS AMENDED BY P.L.217-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 106. ~~Examinations~~ — (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

(a) Training, operating, and policy manuals.

(b) Minutes of:

(i) management meetings; and

(ii) other meetings.

(c) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena witnesses, **and** compel ~~their~~ **the** attendance **of witnesses, including directors, executive officers, managers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this article. The department may also** adduce evidence, and require the production of any matter which is relevant to the investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records pertaining to any transaction subject to this article shall be retained for two (2) years after making the final entry relating to the consumer credit transaction, but in the case of a revolving loan account or revolving charge account, the two (2) years is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

(a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a subordinate lien mortgage transaction.

(b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.5-3-209.

(c) The authority to investigate complaints filed with the department by debtors.

~~(2)~~ **(3)** If the department:

(a) investigates; or

(b) examines the books and records of;

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a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203, the person shall pay all reasonably incurred costs of the investigation or examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5. However, the person is liable for the costs of an investigation or examination under this subsection only to the extent that the costs exceed the amount of the filing fees paid most recently under IC 24-4.5-6-203. Any costs required to be paid under this subsection shall be paid not later than sixty (60) days after the person receives a notice from the department of the costs being assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day that the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.

~~(3)~~ **(4)** The department shall be given free access to the records wherever located. **In making any examination or investigation authorized by this article, the director may control access to any documents and records of the licensee or person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where the documents are usually kept. During the period of control, the licensee or person may not remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or person have been, or are, at risk of being altered or destroyed for purposes of concealing a violation of this article, the licensee or person being examined or investigated is entitled to access to the documents or records as necessary to conduct the licensee's or person's ordinary business affairs.** If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or its representative to examine them where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect them on behalf of the department.

~~(4)~~ **(5)** Upon **a person's** failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all **affected** persons, ~~affected thereby,~~ the department may apply to any civil court **with jurisdiction** for an order compelling compliance.

~~(5)~~ **(6)** The department shall not make public the name or identity of a person whose acts or conduct the department investigates pursuant

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to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

(7) If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:

(a) discontinue receiving one (1) or more services from the person; or

(b) otherwise cease conducting business with the person.

SECTION 67. IC 24-4.5-6-106.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 106.5. To carry out the purposes of this section, the director may:**

(a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing:

(i) resources;

(ii) standardized or uniform methods or procedures; and

(iii) documents, records, information, or evidence obtained under this section;

(c) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensee, an individual, or a person subject to this article;

(d) accept and rely on examination or investigation reports made by other government officials, in or outside Indiana; or

(e) accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering the same general subject matter as the

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audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

SECTION 68. IC 24-4.5-6-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 107. Except as otherwise provided, IC 4-21.5-3 governs all agency action taken by the department under ~~IC 24-4.5-6~~ **this chapter** or IC 24-4.5-3-501 through IC 24-4.5-3-513. **All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County.** The provisions of IC 4-22-2 prescribing procedures for the adoption of rules by agencies shall apply to the adoption of rules by the department of financial institutions under this article. However, if the department declares an emergency in the document containing the rule, it may adopt rules permitted by ~~IC 24-4.5-6~~ **this chapter** under IC 4-22-2-37.1.

SECTION 69. IC 24-4.5-6-107.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 107.5. It is a violation of this article for a person or individual subject to this article to:**

(a) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(b) engage in any unfair or deceptive practice toward any person;

(c) obtain property by fraud or misrepresentation;

(d) solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this article may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(e) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(f) conduct any business covered by this article without holding a valid license as required under this article, or assist or aid and abet any person in the conduct of business under this article without a valid license as required under this article;

(g) fail to make disclosures as required by this article and any other applicable state or federal law, including regulations under that law;

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(h) fail to comply with this article or rules adopted under this article, or fail to comply with any other state or federal law, rule, or regulation, applicable to any business authorized or conducted under this article;

(i) make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a mortgage transaction, or engage in bait and switch advertising;

(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(k) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage transaction, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(l) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this article;

(m) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(n) fail to account truthfully for money belonging to a party to a mortgage transaction; or

(o) knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information subject to examination under this article.

SECTION 70. IC 24-4.5-6-108 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 108. ~~Administrative Enforcement orders.~~ — (1) After notice and ~~hearing~~ **an opportunity to be heard,** the department may order a creditor, or ~~a person acting in his behalf~~ **a person acting on behalf of the creditor,** to cease and desist from engaging in violations of this article. A respondent aggrieved by an order of the department may obtain judicial review of the order and the department may obtain an order of the court for enforcement of its order in any civil court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

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(2) Within thirty (30) days after service of the petition for review upon the department, or within any further time the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing the court may (a) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, (b) grant any temporary relief or restraining order it deems just, and (c) enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the department, or remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of adducing additional specified and material evidence and seeking finding thereon upon good cause shown for the failure to adduce this evidence before the department.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the court on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated within thirty (30) days after a copy of the order of the department is received. If no proceeding is so initiated, the department may obtain a decree of the civil court for enforcement of its order upon a showing that an order was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the department may not issue an order pursuant to this section but may bring a civil action for an injunction (IC 24-4.5-6-111).

SECTION 71. IC 24-4.5-6-110 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 110. ~~Injunctions Against Violation of Article~~ — The department may bring a civil action to restrain a person from violating this article **or another state**

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or federal law or regulation, and for other appropriate relief.

SECTION 72. IC 24-4.5-6-113, AS AMENDED BY P.L.217-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 113. ~~Civil Actions by Department~~ — (1) After demand, the department may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this article. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this article, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the department, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the department to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

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

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the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

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

SECTION 73. IC 24-4.5-6-119 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 119. (a) Subject to subsection (b), if the director determines that a director, an officer, or an employee of a creditor:**

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

(2) has committed fraudulent or unconscionable conduct; or

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

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

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

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

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

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

(c) A person who:

(1) has been convicted of; or

(2) has pleaded guilty or nolo contendere to;

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

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

SECTION 74. IC 24-4.5-6-120 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 120. (a) A notice issued under section 119 of this chapter must:**

(1) be in writing;

(2) contain a statement of:

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

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

(C) the director's intention to issue an order under section 122(a) of this chapter;

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

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

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

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

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

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

(d) An officer, director, or employee of a creditor who is removed from a position under a removal order under section 122

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of this chapter that has become final may not, without the approval of the director, participate in the conduct of the affairs of a licensee described under IC 24-4.5-3.

(e) The director may, for the protection of the creditor or the interests of the creditor's customers, suspend from office or prohibit from participation in the affairs of the creditor an officer, a director, or an employee of a creditor who is the subject of a written notice served by the director under section 119(a) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice under section 119(a) of this chapter. Unless stayed by a court in a proceeding authorized by subsection (f), the suspension or prohibition remains in effect pending completion of the proceedings related to the notice served under section 119(a) of this chapter and until the effective date of an order entered by the department under subsection (b) or the director under subsection (c). If the director suspends or prohibits participation of an officer, a director, or an employee under this subsection, copies of the notice shall also be served upon the creditor or affiliate of which the person is an officer, a director, or an employee.

(f) Not more than fifteen (15) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the creditor or affiliate under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings related to the notice served under section 119(a) of this chapter. The court may stay a suspension of prohibition of the officer, director, or employee.

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

SECTION 75. IC 24-4.5-6-121 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 121. If the director enters into a consent to a final order with a director, an officer, or an employee, the director is not required to issue and serve a notice of charges upon the director, officer, or employee under section 119 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges. The director shall provide a copy of the consent order to the board of directors of the creditor.**

SECTION 76. IC 24-4.5-6-122 IS ADDED TO THE INDIANA

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CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 122. (a) Subject to section 120 of this chapter, if, after a hearing described in section 120(b) of this chapter, the department determines that a director, an officer, or an employee of a creditor has committed an act described in section 119 of this chapter, the department may issue a final order. If a hearing is not requested within the time specified in section 120(b) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 119(a) of this chapter.**

(b) Unless the director has entered into a consent agreement described in section 121 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(c) In a final order under this section, the department or the director, as appropriate, may order one (1) or more of the following with respect to an officer, a director, or an employee of a creditor:

(1) The removal of the officer, director, or employee from the person's office, position, or employment.

(2) A prohibition against any participation by the officer, director, or employee in the conduct of the affairs of any creditor.

(3) If the subject of the order is an officer or a director of a creditor, and subject to section 124 of this chapter, the imposition of a civil penalty not to exceed fifteen thousand dollars ($15,000) for each practice, violation, or act that:

(A) is described in section 119 of this chapter; and

(B) found to exist by the department or the director.

(d) A final order shall be issued in writing not later than ninety (90) days after conclusion of a hearing held under section 120(b) of this chapter, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(e) If the officer, director, or employee does not appear individually or by an authorized representative at a hearing held under section 120(b) of this chapter, the officer, director, or employee is considered to have consented to the issuance of a final order.

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

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confidential.

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

SECTION 77. IC 24-4.5-6-123 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 123. (a) A final order issued under section 122 of this chapter is effective the eleventh day after the date the order is served. However, a final order issued upon consent under section 121 of this chapter is effective at the time specified in the order.**

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

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

SECTION 78. IC 24-4.5-6-124 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 124. (a) The director or the department, as appropriate, shall consider the following factors in determining the amount of a civil penalty that should be assessed against a director or an officer under section 122(c)(3) of this chapter:**

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

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

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

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

(5) Other factors that justice requires.

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

(c) Civil penalties shall be deposited in the financial institutions fund established by IC 28-11-2-9.

SECTION 79. IC 24-4.5-6-125 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 125. The director may enforce any of the following by applying for appropriate relief to a court having jurisdiction:**

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

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

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

SECTION 80. IC 24-4.5-6-201, AS AMENDED BY P.L.217-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 201. (1) This section ~~IC 24-4.5-6-202,~~ and ~~IC 24-4.5-6-203~~ **sections 202 and 203 of this chapter** apply to a person, including a ~~supervised financial organization,~~ **depository institution,** but not including a collection agency licensed under IC 25-11-1, engaged in Indiana in any of the following:

(a) Making consumer credit sales, consumer leases, or consumer loans.

(b) Taking assignments of rights against debtors that arise from sales, leases, or loans by a person having an office or a place of business in Indiana.

(c) Undertaking direct collection of payments from the debtors or enforcement of rights against the debtors.

(d) Placing consumer credit insurance, receiving commissions for consumer credit insurance, or acting as a limited line credit insurance producer in the sale of consumer credit insurance.

(e) Selling insurance or other benefits, the charges for which are approved by the department as additional charges under IC 24-4.5-2-202 or IC 24-4.5-3-202.

(2) This section ~~IC 24-4.5-6-202, and IC 24-4.5-6-203~~ **and sections 202 and 203 of this chapter** are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller credit card issued by a person other than the seller if the issuer of the card has complied with the provisions of this section ~~IC 24-4.5-6-202, and IC 24-4.5-6-203.~~ **and sections 202 and 203 of this chapter.**

(3) This section ~~IC 24-4.5-6-202, and IC 24-4.5-6-203~~ **and sections 202 and 203 of this chapter** apply to a seller whose credit sales are made using credit cards that:

(a) are issued by a lender;

(b) are in the name of the seller; and

(c) can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

SECTION 81. IC 24-4.5-6-202, AS AMENDED BY P.L.217-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 202. (1) Persons ~~other than applicants for a license under IC 24-4.5-3-502(3),~~ that are subject to ~~IC 24-4.5-6-201,~~ this section and ~~IC 24-4.5-6-203~~ **sections 201 and 203 of this chapter** shall file notification with the department within thirty (30) days after

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commencing business in Indiana and thereafter on an annual basis, on the date set forth in subsection (2). The notification shall state the:

(a) name of the person;

(b) name in which business is transacted if different from subdivision (a);

(c) address of principal office, which may be outside Indiana; and

(d) address of all offices or retail stores, if any, in Indiana at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within Indiana at which business is transacted.

(2) A person required to be licensed under this article shall file the notification required by subsection (1) not later than December 31 of each year. All other persons subject to this section shall file the notification required by subsection (1) not later than January 31 of each year.

(3) Persons subject to ~~IC 24-4.5-6-201, IC 24-4.5-6-203,~~ **sections 201 and 203 of this chapter** and this section shall notify the department not later than thirty (30) days after the person:

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

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

(c) files for bankruptcy or reorganization;

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

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

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

SECTION 82. IC 24-4.5-7-102, AS AMENDED BY P.L.217-2007, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 102. (1) Except as otherwise provided, all provisions of this article applying to consumer loans apply to small loans, as defined in this chapter.

(2) This chapter applies to:

(a) a lender or to any person who facilitates, enables, or acts as a conduit for any person who is or may be exempt from licensing under IC 24-4.5-3-502;

(b) a bank, savings association, credit union, or other state or

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federally regulated financial institution except those that are specifically exempt regarding limitations on interest rates and fees; or

(c) a person, if the department determines that a transaction is:

(i) in substance a disguised loan; or

(ii) the application of subterfuge for the purpose of avoiding this chapter.

(3) A loan that:

(a) does not qualify as a small loan under ~~IC 24-4.5-7-104,~~ **section 104 of this chapter;**

(b) is for a term shorter than that specified in ~~IC 24-4.5-7-401(1),~~ **section 401(1) of this chapter;** or

(c) is made in violation of ~~IC 24-4.5-7-402,~~ **section 201, 401, 402, 404, or 410 of this chapter;**

is subject to this article. The department may conform the finance charge for a loan described in this subsection to the limitations set forth in IC 24-4.5-3-508.

SECTION 83. IC 24-4.5-7-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 301. (1) For purposes of this section, the lender shall disclose to the borrower to whom credit is extended with respect to a small loan the information required by the Federal Consumer Credit Protection Act.

(2) In addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public both in the lending area of each business location and in the loan documents the following statement:

"WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions.

A borrower may rescind a small loan without cost ~~not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a borrower must inform the lender that the borrower wants to rescind the small loan, and the borrower must return~~ **by paying** the cash amount of the principal of the small loan to the lender **not later than the end of the business day immediately following the day on which the small loan was made.".**

(3) The statement required in subsection (2) must be in:

(a) 14 point bold face type in the loan documents; and

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(b) not less than one (1) inch bold print in the lending area of the business location.

(4) When a borrower enters into a small loan, the lender shall provide the borrower with a pamphlet approved by the department that describes:

(a) the availability of debt management and credit counseling services; and

(b) the borrower's rights and responsibilities in the transaction.

SECTION 84. IC 24-4.5-7-402, AS AMENDED BY P.L.217-2007, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 402. (1) A lender is prohibited from making a small loan to a borrower if the total of:

(a) the principal amount and finance charges of the small loan to be issued; plus

(b) any other small loan balances that the borrower has outstanding with any lender;

exceeds twenty percent (20%) of the borrower's monthly gross income.

(2) A small loan may be secured by only one (1) check or authorization to debit the borrower's account per small loan. The check or electronic debit may not exceed the amount advanced to or on behalf of the borrower plus loan finance charges contracted for and permitted.

(3) A borrower may make partial payments in any amount on the small loan without charge at any time before the due date of the small loan. After each payment is made on a small loan, whether the payment is in part or in full, the lender shall give a signed and dated receipt to the borrower making a payment showing the amount paid and the balance due on the small loan.

(4) The lender shall provide to each borrower a copy of the required loan documents before the disbursement of the loan proceeds.

(5) A borrower may rescind a small loan without cost ~~not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a borrower must: (a) inform the lender that the borrower wants to rescind the small loan; and (b) return~~ **by paying** the cash amount of the principal of the small loan to the lender **not later than the end of the business day immediately following the day on which the small loan was made.**

(6) A lender shall not enter into a renewal with a borrower. If a loan is paid in full, a subsequent loan is not a renewal.

SECTION 85. IC 24-4.5-7-404, AS AMENDED BY P.L.90-2008, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 404. (1) As used in this section, "commercially reasonable method of verification" means a private consumer credit

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reporting service that the department determines to be capable of providing a lender with adequate verification information necessary to ensure compliance with subsection (4).

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

(3) A lender shall not make a small loan that, when combined with the outstanding balance on another outstanding small loan owed to another lender, exceeds a total of five hundred fifty dollars ($550), excluding finance charges. A lender shall not make a small loan to a borrower who has two (2) or more small loans outstanding, regardless of the total value of the small loans. The amount of five hundred fifty dollars ($550) in this subsection is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.

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

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

(b) an available third party data base provided by a private consumer reporting service, **subject to the identification verification requirements set forth in subsection (12).**

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

(a) provide reasonable notice to all lenders identifying the

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commercially reasonable method of verification that is available; and

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

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

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

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

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

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

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

(9) If a lender ceases doing business in Indiana, the director may require the operator of the data base described in subsection (4)(b) to remove records of the lender's loans from the operator's data base.

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

(a) this section; or

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

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

(12) If a borrower provides the borrower's Social Security number to a lender in connection with any transaction or proposed transaction under this chapter, the lender shall:

(a) maintain procedures to verify that the Social Security number provided is legitimate and belongs to the borrower; and

(b) retain copies of any documents used to verify the borrower's Social Security number. Documentation under this subdivision may be in electronic form and the numbers

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may be truncated.

If a borrower does not have a Social Security number, the lender may require and accept another valid form of government issued identification, subject to the requirements of subdivisions (a) and (b) with respect to the government issued identification accepted.

SECTION 86. IC 24-4.5-7-412 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 412. Upon the receipt of a check from a borrower for a small loan, **unless the check is marked as void at the time of acceptance by the lender,** the lender shall immediately stamp the back of the check with an endorsement that states:

"This check is being negotiated as part of a small loan under IC 24-4.5, and any holder of this check takes it subject to the claims and defenses of the maker.".

SECTION 87. IC 24-4.5-7-413 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 413. (1) A person engaged in making small loans under this chapter shall post a bond to the department in the amount of fifty thousand dollars ($50,000) for each location where small loans will be made, up to a maximum bond **in an** amount ~~of five hundred thousand dollars ($500,000).~~ **determined by the department.**

(2) A bond posted under subsection (1) must continue in effect for two (2) years after the lender ceases operation in Indiana. The bond must be available to pay damages and penalties to a consumer harmed by a violation of this chapter.

SECTION 88. IC 24-5-23.5-4, AS ADDED BY P.L.52-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) As used in this chapter, "mortgage loan" means a loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(b) The term includes the following:

(1) A home loan subject to IC 24-9.

(2) A loan described in IC 24-9-1-1, to the extent allowed under federal law.

(3) A first lien mortgage transaction (as defined in ~~IC 24-4.4-1-301(6))~~ **IC 24-4.4-1-301)** subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is

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created or retained against an interest in real property in Indiana.

(6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

SECTION 89. IC 24-7-1-6, AS ADDED BY P.L.90-2008, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. This article does not apply to the rental of a musical instrument through **a program offered at** an elementary or a secondary school **with the approval of the school.**

SECTION 90. IC 24-7-4-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 13. (a) Except as provided in subsection (b), a lessor may not accept payment from a lessee and hold the amount of the payment in a reserve account for future payments. Any amounts paid by a lessee must be applied as a rental payment or to an accrued permissible additional charge.**

(b) If a lessee makes a payment that exceeds the sum of the scheduled rental payment and any permitted additional charges that are due, the lessor may hold the excess funds in a reserve account subject to the following conditions:

(1) The balance of the lessee's reserve account may not exceed the amount of the next scheduled rental payment.

(2) If the balance in the lessee's reserve account reaches the limit specified in subdivision (1), the lessor shall apply the funds to the lessee's next scheduled rental payment.

(c) This section may not be construed to preclude a lessor from accepting and applying multiple rental payments before the rental payments' scheduled due dates.

SECTION 91. IC 24-7-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. The department shall enforce this article. To carry out this responsibility, the department may do the following:

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

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(2) Issue and enforce administrative orders under IC 4-21.5.
(3) Counsel persons and groups on their rights and duties under this article.
(4) Establish programs for the education of consumers with respect to rental purchase agreement practices and problems.
(5) Make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public.
(6) Adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to carry out this article.
(7) Maintain more than one (1) office within Indiana.
(8) Bring a civil action to restrain a person from violating this article and for other appropriate relief.
(9) Impose a civil penalty under IC 4-21.5 of not more than ~~one thousand dollars ($1,000)~~ **ten thousand dollars ($10,000)** for a violation of this article or a rule adopted under this article.

SECTION 92. IC 24-7-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) A person subject to this article shall make the books and records of the person reasonably available for inspection by the department or the department's representative. **At a minimum, every lessor shall keep a record of all payments remitted by the lessee on a rental purchase agreement, including the following:**

(1) The name of the lessee.
(2) The date of each transaction.
(3) The total amount of each payment.
(4) A breakdown of each payment reflecting:
(A) each type of charge; and
(B) the amount of each type of charge.

The method of maintaining this data is at the discretion of the lessor, if hard copies of the required data are readily available. The record keeping system of the lessor shall be made available in Indiana for examination. The director shall determine the sufficiency of the records and whether the lessor has made the required information reasonably available.

(b) In administering this article and in order to determine compliance with this article, the department or the department's representative may examine the books and records of persons subject to the article and may make investigations of persons necessary to determine compliance. For this purpose, the department may administer oaths or affirmations, and, upon the department's own motion or upon request of any party, may subpoena witnesses, compel their attendance, compel testimony, and require the production of any

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matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

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

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

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

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

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

(h) If a lessor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the lessor and be subject to the department's routine examination procedures, the person that provides the service to the lessor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any lessor that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

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(2) otherwise cease conducting business with the person.

SECTION 93. IC 24-7-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. The notification required under section 1 of this chapter must ~~state~~ **include** the following:

(1) The name of the lessor.

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

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

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

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

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

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

SECTION 94. IC 24-7-8-4, AS AMENDED BY P.L.57-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) A lessor required to file a notification with the department under section 1 of this chapter shall pay to the department the following fees:

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

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

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

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

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

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

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

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~~subsection (a)(2).~~

SECTION 95. IC 26-1-4-102.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 102.5. **(a) As used in this section, "supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business, that is:**

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

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

(b) The provisions of IC 26-1-4 which apply to a bank apply equally to any supervised financial organization ~~as defined in IC 24-4.5-1-301,~~ which is authorized by state or federal law to permit persons to make withdrawals or payments from accounts by negotiable instruments.

SECTION 96. IC 27-7-3-15.5, AS AMENDED BY P.L.105-2009, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. (a) This section applies to a transaction that:

(1) is a single family residential:

(A) first lien purchase money mortgage transaction; or

(B) refinancing transaction; and

(2) is closed after December 31, 2009.

(b) Not later than September 1, 2009, the department shall establish and maintain an electronic system for the collection and storage of the following information concerning any of the following persons that have participated in or assisted with a transaction to which this section applies, or that will participate in or assist with a transaction to which this section applies:

(1) The name and license number (under IC 23-2-5) of each loan brokerage business involved in the transaction.

(2) The name and **license or** registration number ~~(under IC 23-2-5)~~ of ~~each~~ **any mortgage loan** originator **who is:**

(A) either licensed or registered under state or federal law as a mortgage loan originator consistent with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221 Title V); and

(B) involved in the transaction.

(3) The name and license number (under IC 25-34.1) of each:

(A) principal broker; and

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(B) salesperson or broker-salesperson, if any;
involved in the transaction.
(4) The:
(A) name of; and
(B) code assigned by the National Association of Insurance Commissioners (NAIC) to;
each title insurance underwriter involved in the transaction.
(5) The name and license number (under IC 27-1-15.6) of each title insurance agency and agent involved in the transaction as a closing agent (as defined in IC 6-1.1-12-43(a)(2)).
(6) The name and:
(A) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or
(B) license number (under IC 25-34.1) of each broker;
who appraises the property that is the subject of the transaction.
(7) The name of the mortgagee and, if the mortgagee is required to be licensed under ~~(A)~~ IC 24-4.4, ~~or (B) IC 24-4.5-3-502,~~ the license number of the mortgagee.
(8) In the case of a first lien purchase money mortgage transaction, the name of the seller of the property that is the subject of the transaction.
(9) In the case of a first lien purchase money mortgage transaction, the name of the buyer of the property that is the subject of the transaction.
(10) The:
(A) name; and
(B) license number, certificate number, registration number, or other code, as appropriate;
of any other person that participates in or assists with a transaction to which this section applies, as the department may prescribe.

(c) The system established by the department under this section must include a form that:
(1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
(2) allows the closing agent to do the following:
(A) Input information identifying the property that is the subject of the transaction by lot or parcel number, street address, or some other means of identification that the department determines:
(i) is sufficient to identify the property; and
(ii) is determinable by the closing agent.

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(B) Subject to subsection (d) and to the extent determinable, input the information described in subsection (b) with respect to each person described in subsection (b) that participates in or assists with the transaction.

(C) Respond to the following questions:

(i) "On what date did you receive the closing instructions from the creditor in the transaction?".

(ii) "On what date did the transaction close?".

(D) Submit the form electronically to a data base maintained by the department.

(d) Not later than the time of the closing, each person described in subsection (b), other than a person described in subsection (b)(8) or (b)(9), shall provide to the closing agent in the transaction the person's:

(1) legal name; and

(2) license number, certificate number, registration number, or NAIC code, as appropriate;

to allow the closing agent to comply with subsection (c)(2)(B). A person described in subsection (b)(7) shall provide the information required by this subsection for any person described in subsection (b)(6) that appraises the property that is the subject of the transaction on behalf of the person described in subsection (b)(7). A person described in subsection (b)(3)(B) who is involved in the transaction may provide the information required by this subsection for a person described in subsection (b)(3)(A) that serves as the principal broker for the person described in subsection (b)(3)(B). In the case of a first lien purchase money mortgage transaction, the closing agent shall determine the information described in subsection (b)(8) and (b)(9) from the HUD-1 settlement statement.

(e) Except for a person described in subsection (b)(8) or (b)(9), a person described in subsection (b) who fails to comply with subsection (d) is subject to a civil penalty of one hundred dollars ($100) for each closing with respect to which the person fails to comply with subsection (d). The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the person in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(f) Subject to subsection (g), the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

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

(g) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:
(1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and
(2) contained in the data base described in subsection (c)(2)(D);
except to the extent required or authorized by state or federal law.

(h) The department may adopt rules under IC 4-22-2 to implement this section. Rules adopted by the department under this subsection may establish procedures for the department to:
(1) establish;
(2) collect; and
(3) change as necessary;
an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section.

(i) If the department adopts a rule under IC 4-22-2 to establish an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section, as allowed under subsection (h), the department may:
(1) require the fee to be paid:
(A) to the closing agent responsible for inputting the information and submitting the form described in subsection (c)(2); and
(B) by the borrower in the transaction;
(2) allow the closing agent described in subdivision (1)(A) to retain a part of the fee collected to cover the closing agent's costs in inputting the information and submitting the form described in subsection (c)(2); and
(3) require the closing agent to pay the remainder of the fee collected to the department for deposit in the title insurance enforcement fund established by IC 27-7-3.6-1, for the department's use in establishing and maintaining the electronic system required by this section.

SECTION 97. IC 28-1-2-23, AS AMENDED BY P.L.217-2007, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 23. (a) A corporation or an individual acting directly, indirectly, or through or in concert with one (1) or more other corporations or individuals may not acquire control of any bank, trust company, stock savings bank, holding company, corporate fiduciary,

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or industrial loan and investment company unless the department has received **and approved** an application for change in control. ~~by which~~ The department ~~is given~~ **has not more than** one hundred twenty (120) days ~~prior written notice of the proposed change in control and within that time the department has issued~~ **following receipt of an application to issue** a notice approving the proposed change in control. The application shall contain the name and address of the corporation, individual, or individuals who propose to acquire control.

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

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

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

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

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

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

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

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

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

(d) As used in this section, "holding company" means any company (as defined in IC 28-2-15-5 before July 1, 1992, and as defined in IC 28-2-16-5 beginning July 1, 1992) that directly or indirectly controls one (1) or more state chartered financial institutions.

(e) As used in this section, "control", "controlling", "controlled by",

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or "under common control with" means possession of the power directly or indirectly to:

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

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

(f) **The director may determine, in the director's discretion, that** subsection (a) does not apply to ~~any~~ **a** transaction ~~in which~~ **if** the director determines that the ~~relative~~ direct or beneficial ownership of the bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company ~~does~~ **will** not change **as a result of the transaction.**

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

SECTION 98. IC 28-1-2-30.5, AS AMENDED BY P.L.1-2009, SECTION 147, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 30.5. (a) This section applies to the following:

(1) Any:

(A) financial institution;

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

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

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

(2) Any person licensed or required to be licensed under **IC 24-4.4 or** IC 24-4.5.

(b) As used in this section, "customer", with respect to a person

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described in subsection (a), means an individual consumer, or the individual's legal representative, who obtains or has obtained from the person a financial:

(1) product; or

(2) service;

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

(c) As used in this section, "personal information" includes any of the following:

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

(2) Any of the following data elements:

(A) A Social Security number.

(B) A driver's license number.

(C) A state identification card number.

(D) A credit card number.

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

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

(A) Address.

(B) Telephone number.

(C) Information concerning the individual's:

(i) income or other compensation;

(ii) credit history;

(iii) credit score;

(iv) assets;

(v) liabilities; or

(vi) employment history.

(d) As used in this section, personal information is "encrypted" if the personal information:

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

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

(e) As used in this section, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:

(1) a Social Security number;

(2) a driver's license number;

(3) a state identification number; or

(4) an account number;

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are accessible as part of the personal information.

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

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

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

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

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

(2) protects the personal records from misuse.

(h) If a breach of the security of any personal records occurs, the person maintaining the records is subject to the disclosure requirements under IC 24-4.9-3, unless the person is exempt from the disclosure requirements under IC 24-4.9-3-4.

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

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

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

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

(1) applicable law; or

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

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

SECTION 99. IC 28-1-3.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) Immediately upon the taking possession of the business and property of any financial institution under section 2 of this chapter, the department shall give notice by:

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

(2) causing the notice to be served upon the president or other executive officer actively in charge of the business of the financial

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institution; and

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

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

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

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

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

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

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

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

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

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

SECTION 100. IC 28-1-3.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) The department may appoint the receiver of the closed financial institution. ~~If the proposed receiver accepts the appointment,~~ **Unless the receiver is the Federal Deposit Insurance Corporation,** the department, **upon acceptance of the appointment of a receiver,** shall make immediate application to the receivership court for confirmation of the receiver.

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

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

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

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

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

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

SECTION 101. IC 28-1-3.1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. The receiver of a closed financial institution may do the following:

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

(2) Collect all debts, claims, and judgments belonging to the

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financial institution and do such other acts as are necessary to preserve and liquidate its assets.

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

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

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

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

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

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

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

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

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

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

SECTION 102. IC 28-1-3.1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. The receiver may, with ex parte approval of the receivership court, sell all or any part of the financial institution's assets to another state or federally chartered financial institution or to a federal deposit insurance agency acting in its corporate capacity. **The Federal Deposit Insurance Corporation is not required to seek ex parte approval of the receivership court.**

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The receiver may also borrow from a federal deposit insurance agency any amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing state or federally chartered financial institution, assigning any part or all of the assets of the financial institution as security for the loan.

SECTION 103. IC 28-1-3.1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) All parties having claims against the closed financial institution shall present their claims supported by proof to the receiver within one hundred eighty (180) days after the department has taken possession.

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

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

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

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

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

SECTION 104. IC 28-1-3.1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. Any claims filed after the one hundred eighty (180) day claim period prescribed by section 8 of this chapter and subsequently accepted by the receiver or allowed by the receivership court shall be entitled to share in the distribution of assets only to the extent of the undistributed assets in the hands of the receiver on the date the claims are accepted or allowed. **If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.**

SECTION 105. IC 28-1-3.1-10.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10.1. (a) All claims against the financial institution that are proved to the satisfaction of the receiver or approved by the receivership court shall be paid in the following order:

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

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

(A) Court costs.

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

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

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

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

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

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

(4) Deposit obligations.

(5) Other general liabilities.

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

(7) Equity capital securities.

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

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

SECTION 106. IC 28-1-3.1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. **(a)** Within one hundred eighty (180) days of the date that the department has taken possession, the receiver may, at his election, reject:

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

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

The receiver's election to reject a lease shall create no claim for rent other than rent accrued to the date of termination or for actual damages, if any, for the termination not to exceed the equivalent of payment of

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rent for six (6) months.

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

SECTION 107. IC 28-1-3.1-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 13. (a) The receiver, with the approval of the receivership court, may appoint a successor to all rights, obligations, assets, deposits, agreements, and trusts held by the closed financial institution as trustee, administrator, executor, guardian, agent, and all other fiduciary or representative capacities. The successor's duties and obligations begin upon appointment to the same extent binding upon the closed financial institution and as though the successor had originally assumed the duties and obligations. Specifically, the successor shall succeed to and be entitled to administer all trusteeships, administrations, executorships, guardianships, agencies, and all other fiduciary or representative proceedings to which the closed financial institution is named or appointed in wills, whenever probated, or to which it is appointed by any other instrument, court order, or by operation of law.

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

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

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

(2) trust documents held by it;

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

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

SECTION 108. IC 28-1-3.1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14. **(a)** The receiver shall cause notice to be mailed to:

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

(2) all lessees; and

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

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

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

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

SECTION 109. IC 28-1-3.1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. **(a)** When the proceedings described in this chapter have been completed, the receiver shall execute and file, in the manner provided in this section, articles of dissolution, setting forth the following information:

(1) The name of the financial institution.

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

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

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

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

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

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

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

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

(1) Compliance with this section is not required.

(2) The department:

(A) may file the articles of dissolution; and

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

SECTION 110. IC 28-1-3.1-21 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 21. Whenever ~~the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Resolution Trust Corporation, or~~ a federal supervisory agency is bidding, consolidating, merging, selling, or otherwise resolving or disposing of a troubled, an insolvent, or an imminently insolvent financial institution, the director of the department may approve any transaction, including the purchase of assets, the assumption of liabilities, a merger, or the formation of a new financial institution, if the transaction requires the approval of the department.

SECTION 111. IC 28-1-5-2, AS AMENDED BY P.L.57-2006, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) Every corporation has the capacity to act that is possessed by a natural person, but has the authority to perform only those acts that are necessary, convenient, or expedient to accomplish the purposes for which it is formed and that are not repugnant to law.

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

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

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

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

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

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

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

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

(A) Define their duties.

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

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

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

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

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

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

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

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

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

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

(3) Life insurance on the lives of borrowers.

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

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

SECTION 112. IC 28-1-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) As used in this chapter, "corporation" means:

(1) a bank;

(2) a trust company;

(3) a corporate fiduciary;

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

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(5) a savings association; or

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

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

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

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

SECTION 113. IC 28-1-7-4, AS AMENDED BY P.L.90-2008, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) After the resolutions approving a joint agreement of merger have been adopted by the board of directors of each of the corporations, such resolutions and joint agreement shall be submitted for approval by the department. The department may, in its discretion, approve or disapprove the resolution and joint agreement.

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

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

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

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

(4) Whether the proposed transaction, in the department's judgment and considering the available information under the prevailing circumstances, will result in an institution that is

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more favorable to the stakeholders than if the entities were to remain separate.

~~(4)~~ **(5)** Whether the management or other principals of the institution that will result from the proposed transaction under this chapter are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting institution.

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

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

SECTION 114. IC 28-1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Before a proposed disposition described in section 1 of this chapter is submitted to a vote of the shareholders, the resolution proposing the disposition shall be submitted for the approval of the department.

(b) The department may approve a resolution if the corporation ~~(1)~~ has and will have assets in excess of the corporation's liabilities and **either of the following applies:**

(1) The corporation intends to merge out of existence under IC 28-1-7-1.

(2) **The corporation** intends to voluntarily dissolve under IC 28-1-9.

(c) If the department approves a resolution submitted under this section, the department shall:

(1) write or stamp on the resolution:

(A) the words "Approved by the Department of Financial Institutions of the State of Indiana"; and

(B) the date of the approval; and

(2) place the impression of the seal of the department and the signature of the director or the director's authorized designee beneath the approval stamp.

SECTION 115. IC 28-1-9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. In case depositors or other creditors or the holders of shares of any such corporation are unknown or shall fail or refuse to accept their distributive shares in the property and assets of such corporation, or are under any disability, or ~~can not~~ **cannot** be found after diligent inquiry, ~~the board of directors shall make a charge of not to exceed one dollar ($1.00) against each account or claim for which no demand has been made. Proceeds arising from such charges shall be merged into the general assets of the~~

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~~corporation.~~ upon the final settlement of the liquidation, the ~~board of directors shall file at the office of the department in the state capitol building, a complete list of all distributive portions owing to depositors, creditors or owners of shares of stock, after deducting the charge above referred to, and deposit at the office of the department cash to cover such unpaid balances. Such deposit shall have the same force and effect as if payment had been made directly to and accepted by the persons lawfully entitled thereto. The distributive portions so deposited shall be paid over by the department to such depositors, creditors or shareholders respectively, or to the lawful owners of such distributable portions, or to their respective legal representatives upon satisfactory proof being made to the department of their respective rights thereto. If any of the distributive portions so deposited with the department shall not have been claimed within a period of three (3) years after the date of such deposit, after the expiration of said period the department shall make a charge of not to exceed one dollar ($1.00) against each of said claims remaining unpaid, as reimbursement for all costs arising in connection with the trust. The proceeds arising from such charges shall be paid into the state treasury and shall be credited to the financial institutions fund. Any balances remaining shall be paid to the general fund of the state treasury.~~ **liquidating agent shall treat the property as unclaimed property and comply with IC 32-34-1.**

SECTION 116. IC 28-1-11-3.1, AS AMENDED BY P.L.217-2007, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3.1. (a) Any bank or trust company shall have the power to discount, negotiate, sell and guarantee promissory notes, bonds, drafts, acceptances, bills of exchange, and other evidences of debt; to buy and sell, exchange, coin and bullion; to loan money; to borrow money and to issue its notes, bonds, or debentures to evidence any such borrowing and to mortgage, pledge, or hypothecate any of its assets to secure the repayment thereof; to receive savings deposits and deposits of money subject to check, and deposits of securities or other personal property from any person or corporation, upon such terms as may be agreed upon by the parties; to contract for and receive on loans and discounts the highest rate of interest allowed by the laws of this state to be contracted for and received by individuals; to accept, for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, however, the letter of credit must state a specific expiration date; and to exercise all the powers incidental and proper or which may be necessary and usual in carrying on a general banking business, but it shall have no right to

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issue bills to circulate as money.

(b) Subject to such regulations as the department finds to be necessary and proper, any bank or trust company shall have the following powers:

(1) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator, and to obtain such insurance.

(2) To make such loans secured by mortgages on real property or leasehold, as the federal housing administrator insures or makes a commitment to insure, and to obtain such insurance.

(3) To purchase, invest in, and dispose of notes or bonds secured by mortgage or trust deed insured by the federal housing administrator or debentures issued by the federal housing administrator, or bonds or other securities issued by national mortgage associations.

(4) To extend credit to any state agency, with the approval of the department, notwithstanding any other provisions or limitations of IC 28-1. No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, shall be deemed to apply to loans, advances of credit, or purchases made pursuant to subdivisions (1), (2), and (3) and this subdivision.

(5) To purchase, take, hold, and dispose of notes, and mortgages securing such notes, made to any joint stock land bank heretofore incorporated, in any case in which not less than ninety-nine percent (99%) of the stock of said joint stock land bank is owned by the bank or trust company at the time such notes or mortgages be acquired by the bank or trust company; and upon dissolution of any such joint stock land bank, or at any stage in the process of such dissolution, any bank or trust company then owning not less than ninety-nine percent (99%) of the stock of such joint stock land bank may take, hold, and dispose of any notes, mortgages, or other assets of such joint stock land bank of whatsoever nature, including real estate, wheresoever situated, which such joint stock land bank shall assign, transfer, convey, or otherwise make over to such bank or trust company by way of final or partial distribution of its assets to its stockholders upon such dissolution or in connection with the process of such dissolution. No law of

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this state prescribing the nature, amount, location, or form of security, or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loan or advances of credit may be made, or prescribing any ratio between the amount of any loan and the appraised value of the security for such loan, or requiring periodical reductions of the principal of any loan, shall be deemed to apply to loans, notes, mortgages, real estate, or other assets mentioned in this subdivision.

(6) To adopt stock purchase programs for employees and to grant options to purchase, and to issue and sell, shares of its capital stock to its employees, or to a trustee on their behalf (which may be the bank or trust company issuing such capital stock), without first offering the same to its shareholders, for such consideration, not less than par value, and upon such terms and conditions as shall be approved by its board of directors and by the holders of a majority of its shares entitled to vote with respect thereto, and by the department. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuances of such options and the sufficiency thereof shall be conclusive. Any bank or trust company exercising the powers granted in this subsection may, to the extent approved by the department, have authorized and unissued stock required to fulfill any stock option or other arrangement authorized herein.

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

(8) To purchase or construct buildings and hold legal title thereto to be leased to municipal corporations or other public authorities, for public purposes, having resources sufficient to make payment of all rentals as they become due. Each lease agreement shall provide that upon expiration, the lessee will become the owner of the building.

(8.1) Subject to the prior written approval of the department, and notwithstanding section 5 of this chapter, to purchase, hold, and convey real estate which is:

(A) improved or to be improved by a single, freestanding building; and

(B) to be used, in part, as a branch or the principal office of

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that bank or trust company and, in part, as rental property for one (1) or more lessees.

Unless a written extension of time is given by the department, the bank or trust company shall open the branch or principal office within two (2) years from the acquisition date of the real estate. If the bank or trust company does not open a branch or its principal office on the real estate in that time period or if the bank or trust company removes its branch or principal office from the real estate, the bank or trust company shall divest itself of all interest in the real estate within five (5) years from the acquisition date of the real estate, if a branch was not opened, or five (5) years from the removal date of the branch office, whichever applies. Except with the written approval of the department, the sum invested in real estate and buildings used for the convenient transaction of its business as provided in this subdivision shall not exceed fifty percent (50%) of the capital and surplus of the bank or trust company as provided in section 5 of this chapter.

(9) Except as provided in subsections (c) and (d), and subject to subsection (e), to invest **directly or indirectly** in community development corporations and projects of a predominantly civic, community, or public nature, including equity investments in corporations, ~~or~~ **limited partnerships,** limited liability companies, **or other entities** organized for such purposes. Investments by a bank or trust company under this subdivision may not exceed:

(A) in any one (1) project, two percent (2%); and

(B) in the aggregate, five percent (5%);

of the capital and surplus of the bank or trust company. As used in this subdivision and in subsection (c), "capital and surplus" has the meaning set forth in IC 28-1-1-3(10).

(10) Subject to section 3.2 of this chapter, to exercise the rights and privileges (as defined in section 3.2(a) of this chapter) that are or may be granted to national banks domiciled in Indiana.

(c) Investments by a bank or trust company under subsection (b)(9) may exceed the limit set forth in subsection (b)(9)(B) if the director determines that:

(1) the aggregate investments by the bank or trust company under subsection (b)(9) in excess of five percent (5%) of the capital and surplus of the bank or trust company will not pose a significant risk to the affected deposit insurance fund; and

(2) the bank or trust company is adequately capitalized.

However, in no case shall the aggregate investments by a bank or trust

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company under subsection (b)(9) exceed ten percent (10%) of the capital and surplus of the bank or trust company.

(d) Investments by a bank or trust company under subsection (b)(9) in equity investments qualifying for the new markets tax credits under 26 U.S.C. 45D **or other programs approved by the director:**

(1) are not subject to the limit set forth in subsection (b)(9)(A); and

(2) may exceed the limit set forth in subsection (b)(9)(B) if the director determines that:

(A) the aggregate equity investments qualifying for the new markets tax credit **or other programs** that are:

(i) made by the bank or trust company under subsection (b)(9); and

(ii) in excess of five percent (5%) of the capital and surplus of the bank or trust company;

will not pose a significant risk to the affected deposit insurance fund; and

(B) the bank or trust company is adequately capitalized.

However, in no case shall the aggregate equity investments qualifying for the new markets tax credit **or other programs** and made by a bank or trust company exceed ~~ten~~ **fifteen** percent ~~(10%)~~ **(15%)** of the capital and surplus of the bank or trust company.

(e) A bank or trust company shall not make any investment under subsection (b)(9) if the investment would expose the bank or trust company to unlimited liability.

(f) Any rule made and promulgated under and pursuant to this section may apply to one (1) or more banks or trust companies or to one (1) or more localities in the state as the department, in its discretion, may determine.

SECTION 117. IC 28-1-11-3.2, AS AMENDED BY P.L.217-2007, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

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

(2) to engage in **mergers, consolidations, reorganizations, or**

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other activities **or to exercise other powers** authorized for; national banks domiciled in Indiana.

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

(1) granted to national banks; but

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

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

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

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

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

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

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

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

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

(1) the department must:

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

(B) convene a hearing;

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

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

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after the hearing is concluded.

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

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

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

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

SECTION 118. IC 28-1-29-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 0.5. (a) This chapter does not apply to an attorney at law authorized to practice in Indiana or to a depository financial institution (as defined in IC 28-1-1-6).**

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

SECTION 119. IC 28-1-29-1, AS AMENDED BY P.L.90-2008, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. The following words, when used in this chapter, shall have the meaning ascribed to them unless the context clearly requires a different meaning:

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

(2) "Debt management company" is any person doing business as a budget counseling, credit counseling, debt management, or debt

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pooling service or holding the person out, by words of similar import, as providing services to debtors in the management of their finances and debts, and ~~contracting~~ **having a written agreement** with the debtor ~~for a fee~~ to ~~receive from the debtor and~~ disburse money or anything of value. The term includes the following:

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

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

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

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

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

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

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

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

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

(A) made on behalf of a contract debtor;

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

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

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

(A) controls;

(B) is controlled by; or

(C) is under common control with;

a person subject to this chapter.

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

(12) "Plan" means a written debt repayment program in

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which a debt management company furnishes debt management services to a contract debtor and that includes a schedule of payments to be made by or on behalf of the contract debtor and used to pay debts owed by the contract debtor.

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

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

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

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

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

(C) designated as a trust account or other account designated to indicate that the money in the account is not the money of the licensee; and

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

(16) "Month" means a calendar month.

(17) "Day" means a calendar day.

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

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

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

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

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

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

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person:

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

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

SECTION 120. IC 28-1-29-3, AS AMENDED BY P.L.90-2008, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) No person shall operate a debt management company in Indiana without having obtained a license from the department. For purposes of this section, a person is operating in Indiana if:

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

(2) the person:

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

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

(i) Mail.

(ii) Personal delivery.

(iii) Telephone.

(iv) Radio.

(v) Television.

(vi) The Internet or other electronic communications.

(vii) Any other means of communication.

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

(1) the time of application;

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

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

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

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

(2) credit histories; and

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

(d) The fee for a license or renewal shall be fixed by the department under IC 28-11-3-5 and shall be nonrefundable. The department may impose a fee under IC 28-11-3-5 for each day that a renewal fee ~~due and payable under this subsection is~~ **and any related documents that are required to be submitted with the renewal are** delinquent.

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

(f) A license issued under this section:

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

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

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

SECTION 121. IC 28-1-29-4, AS AMENDED BY P.L.217-2007, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) The department may revoke or suspend any license issued under this chapter for the following causes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) is licensed to practice law; and

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

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

(b) Except as provided in section 4.1 of this chapter, the denial, revocation, or suspension shall be made only after specific charges have been filed in writing, under oath, with the department or by the department, whereupon a hearing shall be had as to the reasons for

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such denial, revocation, or suspension and a certified copy of the charges shall be served on the licensee or the applicant for license not less than ten (10) days prior to the hearing.

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

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

(e) If the director of the department:

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

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

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

SECTION 122. IC 28-1-29-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4.1. (a) A license issued by the department under this chapter shall be revoked by the department if the person fails to:

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

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

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

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

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

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

SECTION 123. IC 28-1-29-5, AS AMENDED BY P.L.90-2008, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) Every person doing business as a debt management company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the department and shall contain such information as the department may require.

(b) The department may not issue a license unless the department

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finds that the financial responsibility, character, and fitness of:

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

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

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

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

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

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

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

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

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

SECTION 124. IC 28-1-29-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. Each application for a license shall be accompanied by **proof that the applicant has executed** a bond, **payable** to ~~the state of Indiana, in the sum of twenty-five thousand dollars ($25,000) with surety to the satisfaction of the department and be approved as to form by the state's attorney general, conditioned upon the faithful performance of the rules and regulations of~~ the department, ~~and in compliance with the laws of the state of Indiana.~~ **in an amount determined by the director and in accordance with the standards adopted by the director.** Said bond shall also indemnify any person damaged by failure on the part of the licensee to conduct the business in accordance with the provisions of this chapter.

SECTION 125. IC 28-1-29-7.5, AS AMENDED BY P.L.90-2008, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2010]: Sec. 7.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any ~~of the following apply:~~

~~(1) Any individuals described in section 5(b)(2) or 5(b)(3) of this chapter are under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.~~

~~(2) Any~~ individuals described in section 5(b)(2) or 5(b)(3) of this chapter have been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction.

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

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

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

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

~~whichever applies; or~~

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

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

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

(2) the date the civil action is filed;

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

SECTION 126. IC 28-1-29-7.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 7.7. (a) A licensee may not furnish debt management services to a debtor unless:**

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

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

(A) has prepared a plan for the debtor;

(B) has made a determination, based on the licensee's analysis of the information provided by the debtor and

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otherwise available to the licensee, that the plan is suitable for the debtor and the debtor will be able to meet the payment obligations under the plan; and

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

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

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

(2) inform the debtor of the availability, at the debtor's option, of assistance provided through a toll free communication system or in person, where reasonably available to residents in Indiana, regarding the budget analysis and plan required by subsection (a); and

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

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

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

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

(D) all other creditors.

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

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

(2) A statement that:

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

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

(C) unless the statement would be untrue, the licensee may

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

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

"IMPORTANT INFORMATION FOR YOU TO CONSIDER
(1) Debt management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
(2) We may receive compensation for our services from your creditors.

_____
Name and business address of licensee".

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

"IMPORTANT INFORMATION FOR YOU TO CONSIDER
Debt management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

_____
Name and business address of licensee".

(f) If an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, a licensee may comply with subsection (c) by providing the following disclosure in clear and conspicuous type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER
(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.
(2) Nonpayment of your debts under our program may:
(A) hurt your ability to obtain credit;
(B) lead your creditors to increase finance and other

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charges; and

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

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

_____

Name and business address of licensee".

SECTION 127. IC 28-1-29-8, AS AMENDED BY P.L.1-2009, SECTION 148, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. ~~(a) A licensee shall deliver to every contract debtor, at the time the contract is made, a copy of the contract, showing the:~~

~~(1) date executed;~~

~~(2) rate of charge the licensee will impose;~~

~~(3) initial set up fee;~~

~~(4) cancellation fee;~~

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

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

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

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

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

(1) be in a written form;

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

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

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

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

(6) disclose the following:

(A) The services to be provided.

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

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

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

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

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

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

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

(G) A statement that:

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

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

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

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

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

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

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

(c) An agreement must provide that:

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

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

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

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

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the department any financial records relating to the trust account;

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

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

(A) the identity of the creditor; and

(B) a statement that the debtor has the right to modify or terminate the agreement.

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

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

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

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

~~(f) A licensee may not, except as provided in subsection (g), receive a fee from the contract debtor for services in excess of fifteen percent (15%) of the amount of the debt payable to creditors that the debtor agrees to pay through the licensee, divided into equal monthly payments over the term of the contract. The total monthly amount of fees paid by the contract debtor to the licensee plus the fair share fees paid by the contract debtor's creditors to the licensee shall not exceed twenty percent (20%) of the monthly amount the debtor agrees to pay through the licensee. The accrual method of accounting shall apply to the creditor's fair share fees received by the licensee. The program fee may be charged for any one (1) month or part of a month. As a portion of the total fees and charges stated in the contract, the licensee may require the debtor to pay a maximum initial payment of fifty dollars ($50). The initial payment must be deducted from the total contract~~

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~~fees and charges to determine the monthly amortizable amount for subsequent fees. Unless approved by the department, the licensee may not retain in the debtor's trust account, for charges, an amount greater than one (1) month's fee plus the close-out fee. Any fee charged by the licensee to the debtor under this section for services rendered by the licensee, other than the amount pursuant to subsection (g), is not considered a debt owed by the debtor to the licensee.~~

~~(g) Upon:~~

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

~~(2) termination of payments by a contract debtor;~~

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

~~(h)~~ **(g)** A licensee may not enter into ~~a contract~~ **an agreement** with a debtor unless a thorough, written budget analysis of the debtor indicates that the debtor can reasonably meet the payments required under a proposed ~~debt program or finance program.~~ **plan. The following must be included in the budget analysis:**

(1) Documentation and verification of all income considered. All income verification shall be dated not more than sixty (60) days before the completion of the budget analysis.

(2) Monthly living expense figures must be reasonable for the particular family size and part of the state.

(3) Documentation and verification, either by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of monthly debt payments and balances to be paid outside the plan.

(4) Documentation and verification, either by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of the monthly debt payments and current balances to be paid through the plan.

(5) The date of the budget analysis and the signature of the debtor.

~~(i)~~ **(h)** A licensee may not enter into ~~a contract~~ **an agreement** with a contract debtor for a period longer than ~~twenty-four (24)~~ **sixty (60)** months. **Every thirty (30) months, the licensee shall complete a thorough, written budget analysis of the contract debtor to ensure the debt management plan is still suitable for the contract debtor and the contract debtor will be able to meet the payment**

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obligations under the plan. When adjustments are needed to change the indebtedness listed in the agreement, the licensee may execute a new agreement using the revised figures. A licensee may not increase the monthly fee percentage under section 8.3(c)(2)(A) of this chapter during the term of the original debt management plan agreement.

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

(1) the operation of the other business; or

(2) the sale of other products and services;

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

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

(1) solicit sales of; and

(2) sell;

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

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

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

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

SECTION 128. IC 28-1-29-8.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 8.3. (a) Except as otherwise permitted by this section, a licensee may not:**

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

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

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

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notified of the debtor's and licensee's relationship.

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

(1) A set up fee of not more than fifty dollars ($50) for consultation, obtaining a credit report, and setting up an account. Acceptance of a plan payment constitutes agreement by the creditor to the plan.

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

(A) not more than fifteen percent (15%) of the monthly amount the contract debtor agrees to pay through the licensee, divided into equal monthly payments over the term of the agreement; or

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

The monthly service fee under this subdivision may be charged for any one (1) month or part of a month. The amount of a set up fee under subdivision (1) may not be included in the calculation of the monthly service fee.

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

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

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

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

(2) is reasonable in relation to the benefits.

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

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

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

(i) Any fee charged by the licensee to the debtor under this section for services rendered by the licensee, other than the fees

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described under subsection (e), is not considered a debt owed by the debtor to the licensee.

SECTION 129. IC 28-1-29-8.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 8.6. (a) A debtor may cancel an agreement before midnight of the third business day after the debtor enters into the agreement unless the agreement does not comply with subsection (b) or section 8 or 9.5 of this chapter, in which event the debtor may cancel the agreement at any time after the debtor enters into the agreement and all fees paid by the debtor shall be refunded to the debtor. To exercise the right to cancel, the debtor must give written notice to the licensee. Notice by mail is given when mailed.**

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

"NOTICE OF RIGHT TO CANCEL

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

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

_____ or mail or deliver a signed,

Electronic mail address of licensee

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

_____

Name of licensee

at _____ before midnight on

Address of licensee

_____.

Date

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

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

I cancel this agreement,

_____

Print your name

_____

Signature

_____

Date".

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(c) If a personal financial emergency necessitates the disbursement of a debtor's money to one (1) or more of the debtor's creditors before the expiration of the third business day after the date an agreement is signed, a debtor may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the debtor's own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard form record is void.

SECTION 130. IC 28-1-29-8.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 8.8. (a) If a contract debtor fails to make a payment to a licensee within sixty (60) days after the date a payment is due under an agreement, the agreement is considered canceled by the contract debtor. A contract debtor may file a letter of continuation of an agreement even if the contract debtor did not make a payment within sixty (60) days after a payment was due. All of the following apply to a letter of continuation of an agreement:**

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

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

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

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

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

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

SECTION 131. IC 28-1-29-9, AS AMENDED BY P.L.217-2007, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. ~~(a) All funds received by a licensee or the licensee's agent from and for the purpose of paying bills, invoices, or accounts of a debtor constitute trust funds owned by and belonging to~~

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~~the person from whom they were received. All such funds received by a licensee shall be separated from the funds of the licensee not later than the end of the same business day following receipt by the licensee. All such funds shall thereafter be kept separate and apart at all times from funds belonging to the licensee or any of its officers, employees, or agents and may be used for no purpose other than paying bills, invoices, or accounts of said persons. All such trust funds received at the main or branch offices of a licensee shall be deposited in a bank or banks in an account or accounts in the name of the licensee designated "trust account", or by some other appropriate name indicating that the funds are not the funds of the licensee or its officers, employees, or agents, on or before the close of the same banking day following receipt.~~

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

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

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

(b) A licensee shall do the following:

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

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

(3) Make remittances not later than thirty (30) days after initial receipt of funds. After the initial receipt of funds, remittances shall be made not later than fifteen (15) days after

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receipt of funds, less fees and costs, unless the reasonable payment of one (1) or more of the contract debtor's obligations requires that the funds be held for a longer period to accumulate a sum certain. For purposes of this section, the close-out fee set forth in section 8.3(d) of this chapter is not considered an obligation of the contract debtor.

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

(5) Promptly:

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

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

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

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

(e) If a licensee has established a trust account under subsection (a), the licensee shall reconcile the trust account at least every thirty (30) days after receipt of the bank statement. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each contract debtor's account. If the licensee or the licensee's designee has more than one (1) trust account, each trust account must be individually reconciled.

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

(1) immediately notify the department in writing; and

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

(g) If a contract debtor terminates an agreement or it becomes

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

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

~~(d)~~ **(i)** At least once every three (3) months the licensee shall render an accounting to the **contract** debtor which must itemize the total amount received from the **contract** debtor, the total amount paid each creditor, the amount of charges deducted, the amount of fair share fees received **or withheld** by the licensee from each of the contract debtor's creditors, and any amount held in reserve. A licensee shall, in addition thereto, render such an accounting to a **contract** debtor within seven (7) days after written demand, but not more than three (3) per six (6) month period.

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

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

(2) listing the name and address of:

(A) each creditor paid in full; and

(B) any creditors remaining unpaid.

SECTION 132. IC 28-1-29-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 9.5. (a) A licensee may not, directly or indirectly, do any of the following:**

(1) Misappropriate or misapply money held in trust.

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

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

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

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

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

(ii) payment of a fee.

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

(5) Offer, pay, or give:

(A) a gift or bonus;

(B) a premium;

(C) a reward; or

(D) other compensation;

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

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

(7) Structure a plan in a manner that would result in a negative amortization of any of a debtor's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt.

(8) Compensate the licensee's employees on the basis of a formula that incorporates the number of debtors the employee induces to enter into agreements. It is not a violation of this subsection for a licensee to use the number of successfully completed debt management plans as a criterion for compensation for the licensee's employees.

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

(10) Make a representation that:

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

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

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

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

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

(A) a nonprofit entity unless the licensee is organized and

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properly operating as a nonprofit entity under the law of the state in which entity was formed; or

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

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

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

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

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

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

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

(B) a postdated check or demand draft.

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

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

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

(A) to the department, upon proper demand;

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

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

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

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

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

(d) A licensee may not receive a gift, bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting a debtor in connection with obtaining an

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extension of credit or other service from a lender or service provider.

SECTION 133. IC 28-1-29-9.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 9.7. A licensee:**

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

(2) shall meet the following conditions in advertising:

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

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

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

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

SECTION 134. IC 28-1-29-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 10.5. (a) A licensee shall maintain in the licensee's business any books, accounts, and records that enable the department to determine whether the licensee is complying with this chapter. The books, accounts, and records shall be preserved for at least two (2) years after making the final entry of any agreement recorded in the books, accounts, and records. A licensee is subject to IC 28-1-2-30.5 with respect to any records maintained by the licensee.**

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

(1) Training, operating, and policy manuals.

(2) Minutes of:

(A) management meetings; and

(B) other meetings.

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

(c) The department may also administer oaths or affirmations,

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subpoena witnesses, compel a witness's attendance, adduce evidence, and require the production of any matter that is relevant to the investigation. The department shall determine whether:

(1) the records maintained are sufficient; and

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

(d) If the department:

(1) investigates; or

(2) examines the books and records of;

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

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

(f) If a person fails to:

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

(2) give testimony;

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

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

(h) The department may:

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

(2) exchange with the agency information about a person subject to this chapter, including information obtained during

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an examination of the person.

(i) If a person doing business as a debt management company contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the person doing business as a debt management company and be subject to the department's routine examination procedures, the person that provides the service to the person doing business as a debt management company shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any person doing business as a debt management company that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person refusing the examination; or

(2) otherwise cease conducting business with the person refusing the examination.

SECTION 135. IC 28-1-29-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 13. **(a) The department may enforce this chapter and rules adopted under this chapter by taking one (1) or more of the following actions:**

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

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

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

(4) Prosecute a civil action to:

(A) enforce an order;

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

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

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

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

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

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

(1) the seriousness of the violation;

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

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

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

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

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

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

SECTION 136. IC 28-1-29-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. Any applicant for a license aggrieved by a decision of the department pursuant to this chapter may file a petition for review as prescribed in IC 4-21.5. **Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County.**

SECTION 137. IC 28-1-29-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 15. (a) As used in this section, "consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.**

(b) As used in this section, "federal act" means the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq., as amended).

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

(d) The disclosures and materials required by section 7.7, 8, or 9 of this chapter shall be presented in a form that is capable of

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being accurately reproduced for later reference.

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

(1) contain no other information; and

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

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

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

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

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

(h) A licensee that maintains an Internet web site shall disclose on the home page of the licensee's web site or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals the following:

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

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

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

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

SECTION 138. IC 28-1-29-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 16. Unless the department provides otherwise in a rule, the disclosures and documents required by this chapter must be in English. If a licensee communicates with a debtor primarily in a language other than English, the licensee shall furnish a translation of the disclosures and documents required by this chapter from the other language**

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into English.

SECTION 139. IC 28-1-29-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 17. Unless a fee is specifically authorized under the chapter, a licensee may not solicit or accept a voluntary contribution from a contract debtor for any service provided to the contract debtor.**

SECTION 140. IC 28-1-29-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 18. If a licensee delegates any of the licensee's duties or obligations under an agreement or this chapter to another person, including an independent contractor, the licensee is liable for conduct of the person which, if done by the licensee, would violate the agreement or this chapter.**

SECTION 141. IC 28-2-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. As used in this chapter, "branch" means any office, agency, mobile unit, messenger service, or other place of business at which deposits are received, checks paid, or money lent. However, the term does not include:

(1) the principal office of a bank;
(2) the principal office of an affiliate;
(3) a branch of an affiliate;
(4) an automated teller machine;
(5) a night depository; ~~or~~
(6) a temporary facility authorized in IC 28-2-13-22.5;
(7) a loan production office;
(8) a deposit production office; or
(9) other service delivery mechanisms not considered by the director to be a branch.

SECTION 142. IC 28-2-13-20.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 20.5. Notwithstanding any other provision of this title, upon receipt of approval by the department and all required federal regulatory approvals, a state bank is entitled to establish a branch through a transaction with a savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)), if the transaction

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

SECTION 143. IC 28-5-1-6.3, AS AMENDED BY P.L.217-2007, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2010]: Sec. 6.3. (a) As used in this section, "rights and privileges" means the power:

(1) to:

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

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

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

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

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

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

national banks domiciled in Indiana.

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

(1) granted to national banks; but

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

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

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

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

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

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

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

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

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

(1) the department must:

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

(B) convene a hearing;

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

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

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

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

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

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

SECTION 144. IC 28-5-1-15, AS AMENDED BY P.L.217-2007, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 15. (a) The department shall have charge of the organization, supervision, regulation, examination, and liquidation of all industrial loan and investment companies to which this chapter is applicable, to the same extent and in the same manner as is provided for financial institutions in IC 28-1 and IC 28-11, and for such purpose any company to which this chapter is applicable shall be deemed to be

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and shall be a financial institution within the meaning of the term as used in IC 28-1-2, IC 28-1-3.1, and IC 28-11. The department shall be subject to the same limitations with reference to the disclosure of information as is provided in IC 28-11-3-3.

(b) In conducting an examination of an industrial loan and investment company, the department shall include an examination of the affairs of all the industrial loan and investment company's affiliates necessary to disclose fully:

(1) the relations between the industrial loan and investment company and its affiliates; and

(2) the effect of the relations described in subdivision (1) upon the affairs of the industrial loan and investment company.

In conducting the examination of an affiliate of an industrial loan and investment company, the department has the same powers to examine the affiliate as the department has to examine the affairs of the industrial loan and investment company under this section.

(c) If an industrial loan and investment company contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the industrial loan and investment company and be subject to the department's routine examination procedures, the person that provides the service to the industrial loan and investment company shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any industrial loan and investment company that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

SECTION 145. IC 28-6.1-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) A savings bank may receive deposits of state and federal public funds:

(1) on the same terms and conditions;

(2) with the same rights and privileges; and

(3) subject to the same duties and obligations;

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

(b) The power under subsection (a) includes the right to pledge securities or other assets for the repayment of the deposits if the pledge

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is ~~required~~ **permitted** by **applicable** law or ~~applicable~~ regulation.

SECTION 146. IC 28-6.1-6-24, AS AMENDED BY P.L.217-2007, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 24. (a) As used in this section, "rights and privileges" means the power:

(1) to:

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

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

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

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

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

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

national banks domiciled in Indiana.

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

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

(1) granted to national banks; but

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

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

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

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

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

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

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

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

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

(1) the department must:

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

(B) convene a hearing;

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

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

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

(h) If a savings bank receives approval to exercise the requested rights and privileges granted to national banks domiciled in Indiana, the department shall determine by order whether all savings banks may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all savings banks will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

(i) If the department denies the request of a savings bank under this section to exercise any rights and privileges that are granted to national banks, the savings bank may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the savings bank is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 147. IC 28-7-1-0.5, AS AMENDED BY P.L.90-2008, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 0.5. The following definitions apply throughout

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this chapter:

(1) "Automated teller machine" (ATM) means a piece of unmanned electronic or mechanical equipment that performs routine financial transactions for authorized individuals.

(2) "Branch office" means an office, agency, or other place of business at which deposits are received, share drafts are paid, or money is lent to members of a credit union. The term does not include:

(A) the principal office of a credit union;

(B) the principal office of a credit union affiliate;

(C) a branch office of a credit union affiliate;

(D) an automated teller machine; or

(E) a night depository.

(3) "Credit union" is a cooperative, nonprofit association, incorporated under this chapter, for the purposes of educating its members in the concepts of thrift and to encourage savings among its members. A credit union should provide a source of credit at a fair and reasonable rate of interest and provide an opportunity for its members to use and control their own money in order to improve their economic and social condition.

(4) "Department" refers to the department of financial institutions.

(5) "Surplus" means the credit balance of undivided earnings after losses. The term does not include statutory reserves.

(6) "Unimpaired shares" means paid in shares less any losses for which no reserve exists and for which there is no charge against undivided earnings.

(7) "Related credit union service organization" means, in reference to a credit union, a credit union service organization **(as defined and formed under Part 712 of the regulations of the National Credit Union Administration, 12 CFR 712)** in which the credit union has invested under section ~~9(3)(J)~~ **9(a)(4)** of this chapter.

(8) "Premises" means any office, branch office, suboffice, service center, parking lot, real estate, or other facility where the credit union transacts or will transact business.

(9) "Furniture, fixtures, and equipment" means office furnishings, office machines, computer hardware, computer software, automated terminals, and heating and cooling equipment.

(10) "Fixed assets" means:

(A) premises; and

(B) furniture, fixtures, and equipment.

(11) "Audit period" means a twelve (12) month period designated

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by the board of directors of a credit union.

(12) "Community" means:

(A) a second class city;

(B) a third class city;

(C) a town;

(D) a county other than a county containing a consolidated city;

(E) a census tract;

(F) a township; or

(G) any other municipal corporation (as defined in IC 36-1-2-10).

(13) "Control of a related interest" refers to a situation in which an individual directly or indirectly, or through or in concert with one (1) or more other individuals, possesses any of the following:

(A) The ownership of, control of, or power to vote at least twenty-five percent (25%) of any class of voting securities of the related interest.

(B) The control in any manner of the election of a majority of the directors of the related interest.

(C) The power to exercise a controlling influence over the management or policies of the related interest. For purposes of this clause, an individual is presumed to have control, including the power to exercise a controlling influence over the management or policies of a related interest, if the individual:

(i) is an executive officer or a director of the related interest and directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest; or

(ii) directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(14) "Executive officer" includes any of the following officers of a credit union:

(A) The chairman of the board of directors.

(B) The president.

(C) A vice president.

(D) The cashier.

(E) The secretary.

(F) The treasurer.

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(15) "Immediate family", for purposes of section 17.1 of this chapter, means the spouse of an individual, the individual's minor children, and any of the individual's children, including adults, residing in the individual's home.

(16) "Officer" means any individual who **is not solely a director or committee member and** participates or has the authority to participate in major policymaking functions of a credit union, regardless of whether:

(A) the individual has an official title;

(B) the individual's title designates the individual as an assistant; or

(C) the individual is serving without salary or other compensation.

(17) "Related interest", with respect to an individual, means:

(A) a partnership, a corporation, or another business organization that is controlled by the individual; or

(B) a political campaign committee:

(i) controlled by the individual; or

(ii) the funds or services of which benefit the individual.

(18) Except as provided in ~~section 9(3)(J)~~ **section 9(a)(4)** of this chapter, "capital and surplus" means the sum of:

(A) undivided profits;

(B) reserve for contingencies;

(C) regular reserve; and

(D) allowance for loan and lease losses.

SECTION 148. IC 28-7-1-9, AS AMENDED BY P.L.90-2008, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. **(a)** A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to officers, directors, or committee members under ~~section~~ **sections** 17.1 **and 17.2** of this chapter.

(3) To invest in any of the following:

(A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

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(C) ~~Interest-bearing obligations of the FSLIC Resolution Fund and~~ Obligations of national mortgage associations issued under the authority of the National Housing Act.

(D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).

(E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(F) In savings and loan associations, other credit unions that are insured under IC 28-7-1-31.5, and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company; nor more than forty percent (40%) in all such associations and companies.

(G) Corporate credit unions.

(H) Federal funds or similar types of daily funds transactions with other financial institutions.

~~(I) Mutual funds created and controlled by credit unions, credit union associations, or their subsidiaries. Mutual funds referred to in this clause may invest only in instruments that are approved for credit union purchase under this chapter.~~

~~(J) Shares, stocks, or obligations of any credit union service organization (as defined in Section 712 of the Rules and Regulations of the National Credit Union Administration) with the approval of the department. Not more than ten percent (10%) of the capital and surplus and unimpaired shares of the credit union may be invested under this clause. However, a credit union may invest more than ten percent (10%) of the capital and surplus and unimpaired shares with the prior approval of the department.~~

(I) Shares or certificates of an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 15 U.S.C. 80a-3 and 15 U.S.C. 80a-4 through 15 U.S.C. 80a-64), if all of the following conditions are met:

(i) The fund's assets consist of and are limited to securities in which a credit union may invest directly.

(ii) The credit union has an equitable and undivided

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interest in the underlying assets of the fund.

(iii) The credit union is not liable for acts or obligations of the fund.

(iv) The credit union's investment in any one (1) fund does not exceed fifteen percent (15%) of the amount of the credit union's net worth.

~~(K)~~ **(J)** For a credit union that is well capitalized (as defined in ~~Section~~ **Part** 702 of the Rules and Regulations of the National Credit Union Administration, **12 CFR 702),** investment securities, as may be defined by **a statute or** a policy or rule of the department and subject to the following:

(i) The department may prescribe, by policy or rule, limitations or restrictions on a credit union's investment in investment securities.

(ii) The total amount of any investment securities purchased or held by a credit union may never exceed at any given time ten percent (10%) of the capital and surplus of the credit union. However, the limitations imposed by this item do not apply to investments in the direct or indirect obligations of the United States or in the direct obligations of a United States territory or insular possession, or in the direct obligations of the state or any municipal corporation or taxing district in Indiana.

(iii) A credit union may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this item, a security is speculative or has speculative characteristics if at the time of purchase the security is in default or is rated below the first four (4) rating classes by a generally recognized security rating service.

(iv) A credit union may purchase for its own account a security that is not rated by a generally recognized security rating service if the credit union at the time of purchase obtains financial information that is adequate to document the investment quality of the security.

(v) A credit union that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

(vi) Except as otherwise authorized by this title, a credit union may not purchase any share of stock of a corporation.

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If a credit union possesses stock or another equity investment as a result of a loan default, the credit union shall dispose of the investment within a reasonable period that does not exceed one (1) year or a longer period if approved by the department.

(vii) Subject to items (i) through (iv), a credit union may purchase yankee dollar deposits, eurodollar deposits, banker's acceptances, deposit notes, bank notes with original weighted average maturities of less than five (5) years, and investments in obligations of, or issued by, any state or political subdivision (including any agency, corporation, or instrumentality of a state or political subdivision).

~~(L)~~ **(K)** Collateralized obligations that are eligible for purchase and sale by federal credit unions. However, a credit union may purchase for its own account and sell the obligations only to the extent that a federal credit union can purchase and sell those obligations.

(4) With the prior approval of the department, and subject to the limitations of this subsection, a credit union may organize, invest in, or loan money to a credit union service organization (as defined in Part 712 of the regulations of the National Credit Union Administration, 12 CFR 712). A credit union may not loan or invest in a credit union service organization if the aggregate amount of all such loans or investments in a particular credit union service organization is greater than ten percent (10%) of the capital, surplus, and unimpaired shares of the credit union without the prior written approval of the department. A credit union may organize, invest in, or loan money to a credit union service organization described in this subdivision only if the following requirements are met:

(A) The credit union service organization is adequately capitalized or has a reasonable plan for adequate capitalization if the credit union service organization is to be formed or is newly formed.

(B) The credit union service organization is structured and operated as a separate legal entity from the credit union.

(C) The credit union obtains a written legal opinion that the credit union service organization is structured and operated in a manner that limits the credit union's potential liability for the debts and liabilities of the credit union service organization to not more than the loss of

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money invested in or loaned to the credit union service organization by the credit union.

(D) The credit union service organization agrees in writing to prepare financial statements and provide the financial statements to the credit union at least quarterly, and to the department upon request.

(E) The credit union service organization agrees in writing to obtain an audit of the credit union service organization from a certified public accountant at least annually and provide a copy of each audit report to the credit union, and to the department upon request. A wholly owned credit union service organization is not required to obtain a separate annual audit if the credit union service organization is included in the annual consolidated audit of the credit union that is the credit union service organization's parent.

(F) The credit union service organization operates in compliance with all applicable federal and state laws.

~~(4)~~ **(5)** To deposit its funds into:

(A) depository institutions that are federally insured; or

(B) state chartered credit unions that are privately insured by an insurer approved by the department.

~~(5)~~ **(6)** To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.

~~(6)~~ **(7)** To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.

~~(7)~~ **(8)** To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.

~~(8)~~ **(9)** To charge the member's share account for the actual cost of a necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not

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more than once in any twelve (12) month period.

~~(9)~~ **(10)** To transfer to an accounts payable account, a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of at least two (2) years. The credit union shall not consider the payment of dividends on the transferred account.

~~(10)~~ **(11)** To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its assets is subject to the approval of the department. **A credit union may rent excess space at the credit union's main office or branch as a source of income.**

~~(11)~~ **(12)** To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.

~~(12)~~ **(13)** To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

~~(13)~~ **(14)** To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.

~~(14)~~ **(15)** To sell and cash negotiable checks, travelers checks, and money orders for members.

~~(15)~~ **(16)** To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of the purchasing credit union's capital and surplus unless special written authorization has been granted by the department.

~~(16)~~ **(17)** To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

~~(17)~~ **(18)** To act as a custodian or trustee of any trust created or organized in the United States and forming part of a tax advantaged savings plan which qualifies or qualified for specific tax treatment under Section 223, 401(d), 408, 408A, or 530 of the Internal Revenue Code, if the funds of the trust are invested only

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in share accounts or insured certificates of the credit union.

~~(18)~~ **(19)** To issue shares ~~of its capital stock~~ or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.

~~(19)~~ **(20)** A credit union may exercise any rights and privileges that are:

(A) granted to federal credit unions; but

(B) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

if the credit union complies with section 9.2 of this chapter.

~~(20)~~ **(21)** To sell, pledge, or discount any of its assets. However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.

~~(21)~~ **(22)** To purchase assets of another credit union and to assume the liabilities of the selling credit union.

~~(22)~~ **(23)** To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed twenty percent (20%) of the total assets of that credit union, excluding those public funds.

~~(23)~~ **(24)** To join the National Credit Union Administration Central Liquidity Facility.

~~(24)~~ **(25)** To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent

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~~(0.001)~~ **(0.1%)** of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

~~(25)~~ **(26)** To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

~~(26)~~ **(27)** To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

~~(27)~~ **(28)** Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional obligations as may be incident to becoming an owner or lessor of such property.

(b) A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers granted under this chapter or by rule, order, or declaratory ruling of the department.

SECTION 149. IC 28-7-1-9.2, AS AMENDED BY P.L.217-2007, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

a product, a service, or an investment that is available to or offered by; or

(2) to engage in **mergers, consolidations, reorganizations, or** other activities **or to exercise other powers** authorized for;

federal credit unions domiciled in Indiana.

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(b) A credit union that intends to exercise any rights and privileges that are:

(1) granted to federal credit unions; but

(2) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to federal credit unions that the credit union intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the credit union.

(c) The department shall promptly notify the requesting credit union of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the credit union may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department may deny the requested rights and privileges if the department finds that:

(1) federal credit unions domiciled in Indiana do not possess the requested rights and privileges;

(2) the exercise of the requested rights and privileges by the credit union would adversely affect the safety and soundness of the credit union;

(3) the exercise of the requested rights and privileges by the credit union would result in an unacceptable curtailment of consumer protection; or

(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the credit union.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the credit union's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the credit union may exercise the requested rights and privileges only if the credit union receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the credit union's letter; and

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(2) if a hearing is convened, the department must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a credit union in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a credit union receives approval to exercise the requested rights and privileges granted to federal credit unions domiciled in Indiana, the department shall determine by order whether all credit unions may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all credit unions will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

(h) If the department denies the request of a credit union under this section to exercise any rights and privileges that are granted to federal credit unions, the credit union may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the credit union is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 150. IC 28-7-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) The membership of credit unions shall be clearly and specifically identified. The membership of a credit union shall be limited to one (1) or more qualified groups of persons, immediate family members of the persons in the qualified group or groups, and organizations of those persons. For purposes of this section, a qualified group consists of:

(1) persons having a common bond of occupation, trade, or professional association;

(2) members of a labor organization;

(3) members of a church;

(4) persons engaged in a common trade or profession within a well defined geographical location;

(5) employees of the credit union;

(6) persons who are members of a farm bureau cooperative, or other farm bureau organization, and who have subscribed to one (1) or more shares; or

(7) persons who reside or are employed within a community.

(b) A credit union may expand its membership with an additional qualified group or groups upon prior approval of the department.

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(c) Membership cards must be kept on file and maintained in the credit union's main office for inspection by examiners and must contain at least the following information:

(1) Account number, name, address, date of birth, signature of member, and the date signed.

(2) A statement that the member is eligible for membership in the credit union by reason of employment, membership, affiliation, association, or other relationship with the organization, institution, corporation, or entity included in the credit union's field of membership.

(3) Date, signature, and title of person authorized to record approval by the board, membership officer, or executive committee.

SECTION 151. IC 28-7-1-10.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 10.1. The department shall consider a person, a firm, a corporation, or an organization to be an illegal member if the person, firm, corporation, or organization:**

(1) became a member of a credit union; and

(2) did not qualify under section 10(a) of this chapter or the articles of incorporation of the credit union.

The membership of any illegal member, as determined by the department, shall be terminated and all accounts shall be purged from the active share accounts of the credit union within the period specified in writing by the department. However, a loan agreement between a terminated member and the credit union is unaffected by the termination and, if a loan involving an illegal member is secured by shares, the share account, to the extent encumbered by the loan, remains valid until unencumbered.

SECTION 152. IC 28-7-1-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 10.5. The following apply with respect to the acceptance by credit unions of trusts as members:**

(1) A credit union may accept a trust as a member if:

(A) any of the settlors living at the time of application are eligible for membership; or

(B) none of the settlors is living at the time of application and one (1) or more beneficiaries are eligible for membership.

(2) An account owned by one (1) or more individuals may be titled or retitled in the name of a trust and not in the name of individuals if all of the following are met:

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(A) The trust is eligible for membership in the credit union under subdivision (1).

(B) Each owner of the account consents in writing to titling or retitling the account in the name of the trust.

(C) Any beneficiaries listed on the account are removed as beneficiaries by the owners.

(D) The account is an account that provides tax deferrals or any other tax benefit under state or federal law.

(3) If an account is retitled in the name of a trust under subdivision (2), the membership of an individual who had owned all or an interest in the account is terminated unless the individual:

(A) is a member based on ownership of another account; or

(B) qualifies for, applies for, and is accepted into membership.

SECTION 153. IC 28-7-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 12. **(a)** Every credit union **and every affiliate of a credit union** shall be subject to examination by the department. A credit union shall be examined by the department as often as the department shall deem necessary. The department shall at all times be given free access to all of the books, papers, securities, and other sources of information, ~~in respect to~~ **including audit reports and audit working papers for** any such credit union. The director, the members of the department, and the supervisor in charge of the division shall have the power to subpoena documents and examine witnesses under oath pertaining to the business of the credit union. The department may accept an audit by a certified public accountant and govern its examination procedures and examination fees accordingly. At the close of each examination, a conference shall be conducted to disclose to the board of directors the findings of the examination.

(b) If a credit union contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the credit union and be subject to the department's routine examination procedures, the person that provides the service to the credit union shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may

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order any credit union that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

SECTION 154. IC 28-7-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 15. (a) At the annual meeting, the members shall elect a board of directors and a supervisory committee.

(b) The bylaws:

(1) may provide for a credit committee; and

(2) if a credit committee is provided for, must state whether the credit committee is to be elected by the members or appointed by the board of directors.

(c) The credit committee must consist of not fewer than three (3) nor more than seven (7) members. A director may not be a member of either the credit committee or the supervisory committee.

(d) Each member of the board and each member of the credit committee or the supervisory committee shall take an oath. The length of the term of a member of the board or of the credit committee or the supervisory committee must be set forth in the bylaws.

(e) If a credit union replaces the chief executive officer of the credit union, the credit union shall give the department written notice of the replacement not later than thirty (30) days after replacing a person as the chief executive officer.

(f) Each individual elected or appointed to serve as a director, supervisory committee member, or credit committee member of a credit union, or as a member of any other committee that performs significant ongoing functions relating to the ongoing operations of the credit union, shall meet all of the following criteria:

(1) The individual is a member of the credit union and in good standing according to reasonable criteria established by the credit union board.

(2) The individual is acceptable as a bonding risk by a bonding company licensed to do business in this state.

(3) The individual has not been removed as a director, officer, committee member, or employee of a financial institution by a federal regulator, a state regulator, or a court with jurisdiction.

(4) The department has not removed the individual as a director, officer, committee member, or employee of a credit union, financial institution, or other legal entity under the

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department's enforcement powers under any law of this state.

(5) The individual has not been convicted of a crime involving dishonesty or breach of trust.

(6) The individual is not habitually negligent in paying the individual's financial obligations as determined by criteria reasonably established by the credit union board.

(7) The individual has not been convicted by a court with jurisdiction of a violation, or found in violation by a court with jurisdiction or the department, of any law of this state enforced or administered by the department.

(g) If an individual no longer meets one (1) or more of the requirements of subsection (f) while serving as a director, supervisory committee member, or credit committee member of a credit union, or as a member of any other committee that performs significant ongoing functions relating to the ongoing operations of the credit union, the:

(1) individual immediately shall be removed from that office without further action of the members of the credit union board; and

(2) credit union shall appoint or elect a replacement to fill the vacancy in the manner described in the bylaws.

SECTION 155. IC 28-7-1-16, AS AMENDED BY P.L.141-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. (a) Not more than thirty (30) business days after the conclusion of the annual meeting, the board of directors shall elect from its own members:

(1) a chairperson;

(2) a vice chairperson or vice chairpersons;

(3) a secretary; ~~and~~

(4) a treasurer; **and**

(5) other officers determined necessary by the board of directors.

(b) The board may appoint officers of the credit union.

(c) The office of secretary and treasurer may be held by the same person. The board may appoint:

(1) an assistant secretary;

(2) an assistant treasurer; or

(3) both an assistant secretary and an assistant treasurer.

(d) The board of directors shall have the general management of the affairs, funds, and records of the credit union and shall meet at least monthly, **in person or by any means of communication by which all directors participating may simultaneously hear each other during**

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the meeting. A director participating in a meeting in accordance with this subsection is considered to be present in person at the meeting. Minutes of every meeting of the board of directors or executive committee shall be kept and maintained.

(e) The board may appoint an executive committee to exercise authority delegated to it by the board. ~~All actions taken by the executive committee shall be subject to ratification by the board.~~ **The board retains ultimate responsibility for authority delegated to an executive committee.**

(f) ~~Unless the bylaws provide otherwise,~~ It is the duty of the directors to do the following:

~~(1) To act upon all applications for membership unless the board has appointed a membership officer. The board shall receive the report of the membership officer monthly and shall act upon all those applications for membership not approved by the membership officer.~~

~~(2) To determine rates of interest on loans.~~

~~(3)~~ **(1)** To determine:

(A) the maximum number of shares which may be held by a member; and

(B) the maximum amount which may be loaned to a member.

~~(4) To declare dividends.~~

~~(5)~~ **(2)** To amend the bylaws, provided that the qualifications for membership in the credit union are principally defined in the articles of incorporation.

~~(6)~~ **(3)** To fill vacancies on the board and the credit committee until the next election.

~~(7) To invest the funds of the credit union or to delegate the authority for investments to an executive committee or manager. However, the board of directors shall review all investments made by the executive committee or manager at least monthly.~~

~~(8)~~ **(4)** To set the compensation of members of the board, credit committee, or supervisory committee.

~~(9)~~ **(5)** To establish and annually review written lending **and investment** policies and ~~maintain the policies on file in~~ **other policies necessary for the prudent operation of** the credit union.

(6) To approve an annual operating budget for the credit union.

(g) The board may appoint loan officers. Each loan officer shall furnish to the credit committee or to the board a record of each loan approved or denied at its next meeting. A loan officer, including the treasurer or assistant treasurer, shall not have authority to disburse

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funds of the credit union for any loan which has been approved by the loan officer. ~~Not more than one (1) member of the credit committee may be appointed as loan officer.~~

(h) A credit union board is responsible for the performance of all of the duties listed in this subsection. The board may delegate the performance of the duties to the chief executive officer, who may further delegate one (1) or more of the following duties:

(1) Approving, disapproving, or otherwise acting on applications for membership.

(2) Determining the interest rates on loans and on deposits.

(3) Hiring employees other than the chief executive officer and fixing the employees' compensation.

(4) Making and selling investments according to investment policies adopted by the board.

(5) Designating one (1) or more depositories for funds.

(6) Establishing procedures to implement policies of the credit union board.

(7) Establishing internal controls as necessary.

(8) Determining the amount of a dividend after providing for any required reserves and declaring the dividend.

(i) The board of directors by a majority vote may suspend or remove any officer from the officer's duties as an officer.

(j) Unless specifically prohibited by the bylaws, if this chapter requires or allows a credit union board to take an action at a meeting, the board may take that action without a meeting if a consent in writing setting forth the action taken is signed by all of the directors entitled to vote on the matter. A written consent under this subsection must contain one (1) or more written approvals, each of which sets forth the action taken and bears the signature of one (1) or more directors. The directors shall deliver the directors' signed approvals to the secretary, and the secretary shall file the approvals in the corporate records of the credit union. An action taken by written consent under this subsection is effective on the date that all the directors have approved the consent unless the consent specifies a different effective date. A consent signed by all the directors has the same effect as a unanimous vote. The credit union may represent that the action was approved by a unanimous vote in any document filed with the department under this act.

SECTION 156. IC 28-7-1-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 16.5. (a) This section governs the**

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participation of board members in board actions.

(b) Unless a matter involves setting dividends, loan rates, or fees for services or other general policy applicable to all members of the credit union, a director, a committee member, an officer, or an employee of a credit union shall not in any manner, directly or indirectly, participate in the deliberation or board action on any matter that affects the director's, committee member's, officer's, or employee's pecuniary interest or the pecuniary interest of an entity other than the credit union in which the director, committee member, officer, or employee is interested.

(c) If one (1) or more directors are disqualified from participating in a matter before the credit union board under subsection (b), the remaining qualified directors present at the meeting, if together with the disqualified director constitutes a quorum, may by majority vote exercise all the powers of the board with respect to the matter under consideration. If all of the directors are disqualified, the members of the credit union shall act on the matter.

(d) If one (1) or more committee members are disqualified from participating in a matter before the committee under subsection (b), the remaining qualified committee members, if together with the disqualified committee member constitutes a quorum, may by majority vote exercise all the powers of the committee with respect to the matter under consideration. If all the committee members are disqualified, the credit union board shall act on the matter.

SECTION 157. IC 28-7-1-17, AS AMENDED BY P.L.217-2007, SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 17. (a) Every loan application shall be submitted on a form approved by the board of directors. When making an application, a member shall state the security offered. Loans may be dispersed upon written approval by a majority of the credit committee or a loan officer. If the credit committee or loan officer fails to approve an application for a loan, the applicant may appeal to the board of directors, providing such appeal is authorized by the bylaws.

(b) Loans to members may be made only under the following terms and conditions:

(1) All loans shall be evidenced by notes signed by the borrowing member.

(2) Except as otherwise provided in this section, the terms of any loan to a member with a maturity of more than six (6) months shall provide for principal and interest payments that will amortize the obligation in full within the terms of the loan

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contract. If the income of the borrowing member is seasonal, the terms of the loan contract may provide for seasonal amortization.

(3) Loans may be made upon the security of improved or unimproved real estate. Except as otherwise specified in this section, such loans must be secured by a first lien upon real estate prior to all other liens, except for taxes and assessments not delinquent, and may be made with repayment terms other than as provided in subdivision (2). When the amount of a loan is at least two hundred fifty thousand dollars ($250,000), the fair cash value of real estate security shall be determined by a written appraisal made by one (1) or more qualified state licensed or certified appraisers designated by the board of directors. The credit union loan folder for real estate mortgage loans shall include: ~~when applicable:~~

(A) the loan application;

(B) the mortgage instrument;

(C) the note;

(D) the disclosure statement;

(E) the ~~documentations~~ **documentation** of property insurance;

(F) an appraisal on the real estate for which the loan is made; and

(G) the attorney's opinion of titles or a certificate of title insurance on the real estate upon which the mortgage loan is made.

(4) Loans made upon security of real estate are subject to the following restrictions:

(A) Real estate loans in which no principal amortization is required shall provide for the payment of interest at least annually and shall mature within five (5) years of the date of the loan unless extended and shall not exceed fifty percent (50%) of the fair cash value of the real estate used as security.

(B) Real estate loans on improved real estate, except for variable rate mortgage loans and rollover mortgage loans provided for in subdivision (5), shall require substantially equal payments at successive intervals of not more than one (1) year, shall mature within thirty (30) years, and shall not exceed one hundred percent (100%) of the fair cash value of the real estate used as security.

(C) Real estate loans on unimproved real estate may be made. The terms of the loan shall:

(i) require substantially equal payments of interest and principal at successive intervals of one (1) year or less;

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(ii) mature within ten (10) years; and

(iii) not exceed eighty-five percent (85%) of the fair cash value of the real estate used as security.

(D) Loans primarily secured by a mortgage which constitutes a second lien on improved real estate may be made only if the aggregate amount of all loans on the real estate does not exceed one hundred percent (100%) of the fair cash value of the real estate after such loan is made. Repayment terms shall be in accordance with subdivision (2).

(E) Real estate loans may be made for the construction of improvements to real property. Funds borrowed may be advanced as work on the improvements progresses. Repayment terms must comply with subdivision (2).

(5) Subject to the limitations of subdivision (3), variable rate mortgage loans and rollover mortgage loans may be made under the same limitations and rights provided state chartered savings associations under IC 28-1-21.5 (before its repeal) or IC 28-15 or federal credit unions.

(6) **As used in this subdivision, "originating lender" means the participating lender with which the member contracts.** A credit union may participate with other **state and federal depository** financial institutions **(as defined in IC 28-1-1-6) or credit union service organizations** in making loans to credit union members and may sell a participating interest in any of its loans **under written participation loan policies established by the board of directors.** However, the credit union may not sell more than ninety percent (90%) of the principal of participating loans outstanding at the time of sale. **A participating credit union that is not the originating lender may participate only in loans made to the credit union's own members or to members of another participating state or federal credit union. A master participation agreement must be properly executed. The agreement must include provisions for identifying, either through documents incorporated by reference or directly in the agreement, the participation loan or loans before the sale of the loans.**

(7) Notwithstanding subdivisions (1) through (6), a credit union may make any of the following:

(A) Any loan that may be made by a federal credit union. However, IC 24-4.5 applies to any loan that is:

(i) made under this clause; and

(ii) within the scope of IC 24-4.5.

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Any provision of federal law that is in conflict with IC 24-4.5 does not apply to a loan made under this clause.

(B) Subject to subdivision (3), any alternative mortgage loan (as defined in IC 28-15-11-2) that may be made by a savings association (as defined in IC 28-15-1-11) under IC 28-15-11. A loan made under this clause by a credit union is subject to the same terms, conditions, exceptions, and limitations that apply to an alternative mortgage loan made by a savings association under IC 28-15-11.

(8) A credit union may make a loan under either:

(A) subdivisions (2) through (6); or

(B) subdivision (7);

but not both. A credit union shall make an initial determination as to whether to make a loan under subdivisions (2) through (6) or under subdivision (7). If the credit union determines that a loan or category of loans is to be made under subdivision (7), the written loan policies of the credit union must include that determination. A credit union may not combine the terms and conditions that apply to a loan made under subdivisions (2) through (6) with the terms and conditions that apply to a loan made under subdivision (7) to make a loan not expressly described and authorized either under subdivisions (2) through (6) or under subdivision (7).

(c) Nothing in this section prevents any credit union from taking an indemnifying or second mortgage on real estate as additional security.

SECTION 158. IC 28-7-1-17.1, AS AMENDED BY P.L.90-2008, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 17.1. (a) A credit union may make a loan to the credit union's individual directors and committee members under the following terms and conditions:

(1) The loan must comply with all requirements under this chapter that apply to loans made to other borrowers.

(2) The loan may not be on terms more favorable than those extended to other borrowers.

(3) The borrower may not:

(A) take part in the consideration of; or

(B) vote on;

the borrower's loan application.

(4) Except as provided in subsection (b), a credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the

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individual's immediate family, or the individual's related interests, exceeds the greater of:

(A) five percent (5%) of the credit union's capital and surplus; or

(B) twenty-five thousand dollars ($25,000);

unless the loan is first approved by the credit union's board of directors.

(5) A credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the individual's immediate family, or the individual's related interests, exceeds the lending limits set forth in IC 28-7-1-39.

(6) The total amount of all loans made under this section may not exceed the credit union's capital and surplus. However, the limit set forth in this subdivision does not apply to either of the following:

(A) A loan, in any amount, secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.

(B) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.

(b) Approval by the board of directors under subsection (a)(4) is not required for an extension of credit made under a line of credit approved under subsection (a)(4) if the extension of credit is made not later than fourteen (14) months after the line of credit was approved.

(c) The department may apply the provisions of 12 CFR 215 (Regulation O) in applying and administering this section.

(d) If a loan made to or cosigned, endorsed, or guaranteed by a director or a member of the supervisory, credit, or other committee is more than three (3) months delinquent, the individual:

(1) is automatically removed from the individual's position as director or committee member; and

(2) is ineligible to serve as a director or committee member for two (2) years.

The director may waive the application of this subsection if the director determines that it is in the best interests of the credit union.

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SECTION 159. IC 28-7-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 18. (a) The supervisory committee shall cause the share and loan accounts of the members to be verified with the records of the treasurer at least each biennium.

(b) The supervisory committee shall supervise the acts of the board of directors, credit committee, and officers.

(c) By a majority vote, the supervisory committee may call a meeting of the shareholders to consider any violation of this chapter, or of the bylaws, or any practice of the credit union which, in the opinion of the committee is unsafe and unauthorized.

(d) The supervisory committee shall fill vacancies in its own number until the next annual meeting of the members.

(e) At the close of the audit period, the supervisory committee shall make or cause to be made a thorough audit of the credit union for each audit period and shall make a full report to the directors. The audit shall be made at any time during the one hundred twenty (120) days following the close of the audit period. Tapes, work papers, schedules, and evidence of verification of accounts shall be retained until the next examination by the department. A summary of the report shall be read at the annual meeting and shall be filed and preserved with the records of the credit union.

(f) A credit union with assets of at least ~~ten million dollars ($10,000,000)~~ **five million dollars ($5,000,000)** shall have an annual audit performed by an outside professional accounting firm. The department may require a professional outside audit to be performed upon any credit union when the department questions the safety and soundness of the credit union.

(g) Minutes of every meeting of the supervisory committee shall be kept and maintained.

SECTION 160. IC 28-7-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 19. The capital of a credit union shall consist of the payments on shares which have been made to it by members. A credit union may attach a lien on the shares of any member with outstanding obligations to the credit union. A credit union may, upon the resignation of a member, cancel the shares of such member, and apply the withdrawal value of such shares towards the liquidation of the member's obligations. Fully paid up shares of a credit union may be transferred to any qualified member upon such terms as the bylaws provide. **If a federal credit union is authorized by the federal regulatory authority with jurisdiction or by federal law to use one (1) or more forms of secondary capital, the department may by rule, order, or declaratory ruling allow a**

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credit union to use one (1) or more forms of secondary capital. The rule, order, or declaratory ruling must include disclosure requirements concerning the conditions for return of the secondary capital and the liquidation priority of the secondary capital.

SECTION 161. IC 28-7-1-20.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 20.1. **(a)** Shares may be issued as the bylaws provide. The provisions of IC 28-1-20-6 apply to loans to any borrower and shall inure to the benefit of the credit union. Shares may be issued in a joint tenancy with right of survivorship, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless the tenant is a member.

(b) A credit union may issue shares to and receive deposits from a minor. The minor may withdraw the deposits or shares and any dividends or interest on the deposits or shares. A deposit, investment in a share, or withdrawal under this subsection by a minor is valid and enforceable. The minor is considered an adult with respect to the deposit, investment, or withdrawal.

SECTION 162. IC 28-7-1-22, AS AMENDED BY P.L.90-2008, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 22. **(a)** A credit union may borrow from any source. The total borrowing of a credit union may not at any time exceed fifty per cent (50%) of the unimpaired shares capital and surplus of the credit union.

(b) A credit union may receive deposits of state and federal public funds, including the right to pledge securities or other assets for the repayment of the deposits if the pledge is permitted by applicable law or regulation.

SECTION 163. IC 28-7-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 24. (a) All entrance charges shall, after payment of the organization expenses, be known as reserve income, and shall be added to the regular reserve of the credit union. At the close of the dividend period, there shall be set apart to the regular reserve ten percent (10%) of gross income until the regular reserve shall equal seven and one-half percent (7 1/2%) of the total of outstanding loans, then five percent (5%) of gross income until the regular reserve shall equal ten percent (10%) of the total of outstanding loans. Whenever the regular reserve falls below ten percent (10%) or seven and one-half percent (7 1/2%) of the total of outstanding loans, it shall be replenished by regular contributions to maintain the reserve goals of seven and one-half percent (7 1/2%) or ten percent (10%). The regular reserve shall be held to meet contingencies and shall not be distributed to the members except upon dissolution of the credit union.

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(b) A credit union may have an undivided profits account. The undivided profits account may be transferred to the regular reserve. ~~or used for the payment of dividends or necessary operating expenses with board approval.~~

(c) The department may, by rule, revise the formula prescribed by this section. A revised formula must be prudent and must reasonably be expected to protect the credit unions.

(d) Financial statements of credit unions must provide for full and fair disclosure of all assets, liabilities, and members' equity, including such allowance for loan loss accounts necessary to present fairly the financial position, and all income and expenses necessary to present fairly the results of operation for the period concerned.

(e) The maintenance of an allowance for loan losses and investment or other losses does not exempt a credit union from the requirement set forth in subsection (a) or regulation CU-2. The totals of the regular reserve, the allowance for loan losses account, and the allowance for investment losses shall be combined for determining the percentage of gross income to be transferred to the regular reserve.

(f) Loan losses of a credit union must be charged against the allowance for loan loss. Adjustments to the allowance for loan losses shall be made before the distribution of any dividend so that the allowance for loan loss represents the value of loans and anticipated losses resulting from:

(1) uncollectible loans, notes, and contracts receivable, including any uncollectible accrued interest receivable thereon;

(2) assets acquired in liquidation of loans; and

(3) loans purchased from other credit unions.

(g) Adjustments to the allowance for loan losses must be recorded in the expense account "provision for loan losses".

(h) If the balance of the allowance for loan losses is considered to be in excess of the amount needed to meet the full and fair disclosure requirements, the excess amount must be transferred to the regular reserve account or deducted from the provision for loan loss expense account.

SECTION 164. IC 28-7-1-24.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 24.1. (a) Notwithstanding section 24(a) of this chapter as it applies to the regular reserve formula, a credit union that:**

(1) has only share accounts that are insured by an agency of the federal government, the state, or an insuring entity that is approved by the department to insure credit union shares;

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(2) has assets of five hundred thousand dollars ($500,000) or more; and

(3) has been in operation for more than four (4) years;

may maintain reserves in accordance with this section.

(b) For purposes of this section, "risk assets" means all assets except the following:

(1) Cash on hand.

(2) Deposits or shares in federally or state insured banks, savings and loan associations, and credit unions.

(3) Investments that are direct or indirect obligations of the United States government or its agencies.

(4) Loans to other credit unions.

(5) Student loans insured under the Higher Education Act (20 U.S.C. 1071 et seq.) or similar state insurance programs.

(6) Loans insured under the National Housing Act (12 U.S.C. 1703) by the Federal Housing Authority.

(7) Credit union mutual funds authorized by the Indiana Credit Union Act under IC 28-7-1-9(3)(I).

(8) Prepaid expenses.

(9) Accrued interest on nonrisk investments.

(10) Furniture and equipment.

(11) Land and buildings.

(12) Loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of loan outstanding.

(13) Loans that are purchased from liquidating credit unions and guaranteed by an insuring agency of the federal government, the state, or an agency approved by the department to insure credit union share accounts.

(c) At the end of each accounting period, the gross income shall be determined. Based on the amount of gross income, ten percent (10%) of the gross income shall be set aside, as a regular reserve, until the reserve shall equal four percent (4%) of total risk assets, and then five percent (5%) of the gross income shall be set aside, until the reserve equals six percent (6%) of total risk assets.

(d) Except for the method of calculating the regular reserve formula, all other provisions of section 24 of this chapter pertaining to entrance fees and charges, requirements of a special reserve for delinquent loans, and waiver of such special reserve, apply to credit unions that have reserves that are calculated under this section.

SECTION 165. IC 28-7-1-26.3 IS ADDED TO THE INDIANA

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CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 26.3. (a) A credit union board may terminate the membership of, or terminate some or all services to, a member who does any of the following:**

(1) Causes a loss to the credit union.

(2) Commits fraud or another misdeed against the credit union or against a person on the premises of the credit union.

(b) Pending action by the credit union board at the credit union board's next regularly scheduled meeting, a credit union may immediately suspend any credit union services to a member who does any of the following:

(1) Causes a loss to the credit union.

(2) Commits fraud or another misdeed against:

(A) the credit union; or

(B) a person on the premises of the credit union.

(c) A member may withdraw from a credit union at any time. However, the credit union may require a notice of withdrawal from the withdrawing member as a condition of withdrawal.

(d) Unless the withdrawal of a member occurs on a maturity date or not later than seven (7) days after a maturity date, a credit union may require that a withdrawing member give sixty (60) days written notice of the member's intention to withdraw shares. A credit union may waive an applicable notice period for a specific member or account in writing.

(e) After a termination or withdrawal under this section, the former member has no rights in the credit union. However, the termination or withdrawal does not release the former member from any remaining liability to the credit union.

SECTION 166. IC 28-7-1-26.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 26.5. (a) A credit union may refuse to make a payment from an account to a person claiming an interest in the account if the credit union:**

(1) is uncertain under the agreement governing the account of who is entitled to receive the payment; or

(2) has actual knowledge of a dispute between any account owners, beneficiaries with present vested rights in the account, or other persons concerning ownership of the money in the account, the proposed withdrawal, or any previous withdrawals from the account.

(b) If a credit union refuses to make a payment under subsection (a), the credit union:

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(1) shall notify, in writing, the account owners, beneficiaries with present vested rights in the account, and other persons claiming an interest in the account of the basis for the credit union's refusal; and

(2) may refuse to make the payment until all interested parties consent in writing to the requested payment or a court with jurisdiction orders the credit union to make the payment.

(c) The credit union is not liable in damages as a result of an action taken under this section.

SECTION 167. IC 28-7-1-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 31. Every credit union shall make provisions for adequate fidelity coverage for **directors,** officers, and employees of the credit union. The amount and form of fidelity coverage must be approved by the board of directors of the credit union. Coverage may be provided:

(1) in the form of a blanket fidelity bond issued by a corporate surety authorized to transact business in Indiana; or

(2) through the establishment of a separate reserve fund within the credit union for that purpose.

SECTION 168. IC 28-7-1-31.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 31.3. (a) As used in this section, "official" means an individual who is or who was a director, committee member, officer, or employee of a credit union.**

(b) An official of a credit union shall discharge the duties of the official's position in good faith and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the official's duties, an official may rely upon:

(1) the opinion of legal counsel for the credit union;

(2) the report of an independent appraiser selected with reasonable care by:

(A) the board; or

(B) an officer of the credit union; or

(3) financial statements of the credit union:

(A) represented to the official to be correct by the:

(i) chief executive officer; or

(ii) officer of the credit union having charge of the credit union's records; or

(B) stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the credit union.

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(c) As used in this section, "credit union" includes all other credit unions that become related to a credit union by a consolidation or merger and the resulting or continuing credit union.

(d) A credit union may indemnify a director, a committee member, an officer, an employee, or an agent to the extent and in the same manner that a corporation may indemnify a director, committee member, officer, employee, or agent under IC 28-13-13-2 through IC 28-13-13-13.

SECTION 169. IC 28-7-1-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 33. (a) Any two (2) or more credit unions may, with the approval of the department, merge. This section authorizes the merger of a credit union organized under this chapter with a credit union organized under any other law.

(b) The board of directors of each credit union participating in the merger must by majority vote approve a joint agreement of merger.

(c) After the resolutions approving a joint agreement of merger have been adopted by the board of directors of each credit union, the credit unions shall submit the resolutions and joint agreement to the department for approval. **The department may, in the department's discretion, approve or disapprove the resolution and joint agreement. In deciding whether to approve or disapprove the resolution and joint agreement under this section, the department shall consider the following factors:**

(1) Whether the credit unions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any credit union subject to the proposed transaction will jeopardize the financial stability of any other credit unions subject to the proposed transaction.

(3) Whether the proposed transaction will result in a credit union that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(4) Whether the proposed transaction, in the department's judgment and considering the available information under the prevailing circumstances, will result in an institution that is more favorable to the stakeholders than if the entities were to remain separate.

(5) Whether the management or other principals of the credit union that will result from the proposed transaction are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting credit

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union.

(6) Whether the credit unions subject to the proposed transaction furnish all the information the department requires in reaching the department's decision.

(d) If the joint agreement is approved by the department, any credit union whose existence will terminate as a result of the merger shall submit the joint agreement to a vote of its shareholders at the meeting directed by the resolution of the board of directors. A majority of the shareholders present at the meeting may approve the joint agreement. However, the department may permit the merger to become effective without the affirmative vote of the membership of a credit union if that credit union is in danger of insolvency or if the qualified group or groups associated with the credit union either have ceased or will soon cease to exist.

(e) After approval of the joint agreement by the shareholders of the merging credit unions, each credit union shall execute in triplicate articles of merger, on forms furnished by the department, which shall set forth the following:

(1) The time and place of the meeting of the board of directors at which the plan was approved.

(2) The vote by which the plan was approved by the board.

(3) A copy of the resolution or other action by which the plan was agreed upon.

(4) The time and place of the meeting of the members at which the plan was approved.

(5) The vote by which the plan was approved by the members.

(f) The articles, joint agreement, and resolutions shall be delivered to the department for certification, which shall be evidenced in the manner prescribed in IC 28-12-5, and shall be presented to the secretary of state for recording. The secretary of state shall file one (1) copy of the articles of merger and shall issue a certificate of merger and two (2) copies of the articles of merger to the surviving credit union. The date on which the secretary of state issues the certificate of merger is the effective date of the merger.

(g) The articles of merger shall be filed with the county recorder of the county in which the principal office of the surviving credit union is located.

SECTION 170. IC 28-7-5-4, AS AMENDED BY P.L.1-2009, SECTION 149, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) Application for a pawnbroker's license shall be submitted on a form prescribed by the department and must include all information required by the

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department. An application submitted under this section must identify the location or locations at which the applicant proposes to engage in business as a pawnbroker in Indiana. If any business, other than the business of acting as a pawnbroker under this chapter, will be conducted by the applicant or another person at any location identified under this subsection, the applicant shall indicate for each location at which another business will be conducted:

(1) the nature of the other business;

(2) the name under which the other business operates;

(3) the address of the principal office of the other business;

(4) the name and address of the business's resident agent in Indiana; and

(5) any other information the director may require.

(b) An application submitted under this section must indicate whether any individual described in section 8(a)(2) or 8(a)(3) of this chapter at the time of the application:

(1) is under indictment for a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction; or

(2) has been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction.

(c) The director may request that the applicant provide evidence of compliance with this section at:

(1) the time of application;

(2) the time of renewal of a license; or

(3) any other time considered necessary by the director.

(d) For purposes of subsection (c), evidence of compliance with this section may include:

(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in subsection (b);

(2) credit histories; and

(3) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (c). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history

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background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

SECTION 171. IC 28-7-5-8, AS AMENDED BY P.L.90-2008, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) Upon an applicant's filing of the application required by section 4 of this chapter and payment of the license fee, if the department finds the financial standing, competence, business experience, and character of:

(1) the applicant and any significant affiliate of the applicant;

(2) each ~~executive officer,~~ director, **executive officer,** or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and

(3) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such that the business will be operated honestly, fairly, and efficiently and that the convenience and needs of the public exist for the operation of the business in the community wherein the applicant proposes to operate, it shall issue and deliver a license to the applicant, which license shall authorize the applicant to engage in the business of pawnbroking.

(b) The director is entitled to request evidence of compliance with the requirements of this section by the licensee, including any affiliate or person described in subsection (a), at:

(1) the time of issuance of the license;

(2) the time of renewal of the license; or

(3) any other time considered necessary by the director.

A license shall remain in effect until it is surrendered, revoked, or suspended. If the department denies the application, it shall notify the applicant of the denial. ~~and return the sum paid by the applicant as a license fee.~~ The department may hold a public hearing if the department considers the hearing necessary.

(c) The department may deny an application under this section if the director determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(d) If a licensee replaces a manager, the licensee shall give the department written notice of the replacement not later than thirty (30) days after engaging another person to serve as manager.

SECTION 172. IC 28-7-5-10.1, AS AMENDED BY P.L.90-2008,

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SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10.1. (a) A licensee that decides to cease engaging in business as a pawnbroker in Indiana shall do the following not later than thirty (30) days before closing the licensee's pawnbroking business:

(1) Notify the department of:

(A) the licensee's intention to cease engaging in business as a pawnbroker in Indiana; and

(B) the date on which the licensee's pawnbroking business will cease.

(2) Surrender the license to the department.

(3) Provide the following to all pledgers that have loans outstanding with the licensee:

(A) Notice of:

(i) the licensee's intention to cease engaging in business as a pawnbroker in Indiana; and

(ii) the date on which the licensee's pawnbroking business will cease.

(B) Instructions, approved by the director, on how pledged articles may be redeemed before the date identified under clause (A)(ii).

(b) If:

(1) a licensee ceases engaging in business as a pawnbroker in Indiana without complying with subsection (a); and

(2) the director determines that it is in the public interest that the department ~~oversee~~ **oversees** the liquidation of the licensee's business;

the director may appoint a liquidating agent to conclude the affairs of the licensee's pawnbroker business in Indiana. The department may use the proceeds of the licensee's bond under section 5 of this chapter to pay the expenses of the liquidation.

(c) If:

(1) a license is revoked under section 13 of this chapter and the director determines that it is not in the best interests of the public for the licensee to liquidate the business; or

(2) the director otherwise determines that it is in the best interests of the public;

the director may appoint a liquidating agent to conclude the affairs of the licensee's pawnbroker business in Indiana. The department may use the proceeds of the licensee's bond under section 5 of this chapter to pay the expenses of liquidation.

SECTION 173. IC 28-7-5-10.6, AS AMENDED BY P.L.90-2008,

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SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any individual described in section 8(a)(2) or 8(a)(3) of this chapter

~~(1) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or~~

~~(2)~~ has been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 4(b) of this chapter:

(1) not later than thirty (30) days after the licensee or any individual described in section 8(a)(2) or 8(a)(3) of this chapter

~~(A) has been put on notice of the indictment; or~~

~~(B)~~ has been convicted of or pleaded guilty or nolo contendere to the felony;

~~whichever applies;~~ or

(2) if the licensee's next license renewal fee under section 11 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 11 of this chapter.

SECTION 174. IC 28-7-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. ~~Every licensee~~ **A license** ~~shall pay to the department~~ **must be renewed** before June 1 of each year ~~a~~ **by filing a renewal application prescribed by the director. The department shall prescribe the form of the renewal application. To be accepted for processing, the license renewal** fee fixed by the department under IC 28-11-3-5 ~~for the license renewal.~~ **and all other information and documents requested by the director must be filed with the renewal application.** The department may impose a **daily late** fee ~~of five dollars ($5) per day~~ **fixed by the department under IC 28-11-3-5** on any license **renewal** fee that is not received before June 1.

SECTION 175. IC 28-7-5-15.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.1. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County.**

SECTION 176. IC 28-7-5-16, AS AMENDED BY P.L.57-2006,

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SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. (a) The licensee shall keep and use in ~~his~~ **the licensee's** business such books, accounts, and records as will enable the department to determine whether the licensee is complying with this chapter and with the rules adopted by the department under this chapter. Every licensee shall preserve such books, accounts, and records, including cards used in the card system for at least two (2) years after making the final entry on any loan recorded therein. The books and records of the licensee shall be kept so that the pawnbroking business transacted in Indiana may be readily separated and distinguished from the business of the licensee transacted elsewhere and from any other business in which the licensee may be engaged. To determine whether the licensee is complying with this chapter and with rules adopted by the department under this chapter, the department may examine the books, accounts, and records required to be kept by the licensee under this subsection. If the department examines the books, accounts, and records of the licensee under this subsection, the licensee shall pay all reasonably incurred costs of the examination in accordance with the fee schedule adopted under IC 28-11-3-5.

(b) If a pawnbroker, in the conduct of the business, purchases an article from a seller, the purchase shall be evidenced by a bill of sale properly signed by the seller. All bills of sale must be in duplicate and must recite the following separate items:

(1) Date of bill of sale.
(2) Amount of consideration.
(3) Name of pawnbroker.
(4) Description of each article sold. However, if multiple articles of a similar nature that do not contain an identification or serial number (such as precious metals, gemstones, musical recordings, video recordings, books, or hand tools) are delivered together in one (1) transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any other unique identifying marks, numbers, names, letters, or special features.
(5) Signature of seller.
(6) Address of seller.
(7) Date of birth of the seller.
(8) The type of government issued identification used to verify the identity of the seller, together with the name of the governmental agency that issued the identification, and the identification number present on the government issued identification.

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(c) If a pawnbroker, in the conduct of the business, purchases an article from a seller on the condition of selling the property back at a stipulated price, the transaction shall be evidenced by a bill of sale properly signed by the seller. All such bills of sale must be in duplicate and recite the information in subsection (b) and must also contain the following information:

(1) Date of resale.

(2) Amount of resale.

(d) The original copy of the bill of sale shall be retained by the pawnbroker. The second copy shall be delivered to the seller by the pawnbroker at the time of sale. The heading on all bill of sale forms must be in boldface type.

(e) Each licensee shall maintain a record of control indicating the number of accounts and dollar value of all outstanding pawnbroking receivables. Each licensee shall maintain a separate record of transactions subject to subsection (c).

(f) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any licensee that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

SECTION 177. IC 28-7-5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 22. **(a)** The holder of ~~such~~ **a** ticket **described in section 21 of this chapter** shall be presumed to be the person entitled to redeem the pledge, and, **except as provided in subsection (b),** the pawnbroker shall deliver the pledge to the person presenting the ticket, upon payment of principal, interest and charge.

(b) If a local ordinance or other law requires the retention of the pledge for a specific period of time, the pawnbroker shall comply with the local ordinance or other law if the retention period does not exceed ten (10) days.

SECTION 178. IC 28-7-5-23 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 23. **(a) Except as provided in subsection (b),** when a ticket, instead of being presented in person, is sent to the pawnbroker by mail, accompanied with a money order for the total amount due and a reasonable fee for shipping and handling, the pawnbroker may securely pack and forward the pledge to the pledger in accordance with the remitter's instructions. If the remittance is insufficient to cover the amount due, the pawnbroker shall either notify the remitter of the amount of the deficiency or send the pledge subject to the payment of shipping charges by the consignee. The pawnbroker's liability for the pledge shall cease upon delivery of the pledge to the carrier or his agent.

(b) If a local ordinance or other law requires the retention of the pledge for a specific period, the pawnbroker shall comply with the local ordinance or other law if the retention period does not exceed ten (10) days.

SECTION 179. IC 28-7-5-38.1, AS ADDED BY P.L.90-2008, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 38.1. If the department determines, after notice and opportunity ~~for hearing,~~ **to be heard,** that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this chapter, impose on the person a civil penalty that does not exceed ten thousand dollars ($10,000) per violation.

SECTION 180. IC 28-8-4-20, AS AMENDED BY P.L.90-2008, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 20. (a) A person may not engage in the business of money transmission without a license required by this chapter.

(b) An application for a license must be submitted on a form prescribed by the department and must include the information required by the department.

(c) An application submitted under this section must indicate whether any individuals described in section 35(b)(2) or 35(b)(3) of this chapter:

(1) are, at the time of the application, under indictment for a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction; or

(2) have been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction.

(d) The director may request evidence of compliance with this section at:

(1) the time of application;

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(2) the time of renewal of a license; or

(3) any other time considered necessary by the director.

(e) For purposes of subsection (d), evidence of compliance may include:

(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for an individual described in section 35(b)(2) or 35(b)(3) of this chapter;

(2) credit histories; and

(3) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (d). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

SECTION 181. IC 28-8-4-32, AS AMENDED BY P.L.217-2007, SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 32. (a) An application must be accompanied by a nonrefundable application fee as fixed by the department under IC 28-11-3-5.

(b) If a license is granted, the application fee constitutes the license fee for the applicant's activities through ~~December~~ **March** 31 of the year in which the initial license is granted.

SECTION 182. IC 28-8-4-40.6, AS AMENDED BY P.L.90-2008, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 40.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, ~~any of the following apply:~~

~~(1) The licensee, or any individual described in section 35(b)(2) or 35(b)(3) of this chapter, is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.~~

~~(2)~~ the licensee, or any individual described in section 35(b)(2) or 35(b)(3) of this chapter, has been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or~~

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~~misrepresentation~~ under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 24(5)(B) or 25(6)(B) of this chapter, whichever applies:

(1) not later than thirty (30) days after the licensee or individual described in section 35(b)(2) or 35(b)(3) of this chapter

~~(A) has been put on notice of the indictment; or~~

~~(B)~~ has been convicted of or pleaded guilty or nolo contendere to the felony;

~~whichever applies;~~ or

(2) if the licensee's next license renewal fee under section 37 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 37 of this chapter.

SECTION 183. IC 28-8-4-41, AS AMENDED BY P.L.57-2006, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 41. (a) The director may conduct an annual onsite examination of a licensee or an authorized delegate of a licensee.

(b) If the director determines that a reasonable belief exists that a person is operating without a valid license or in violation of this chapter, the director has the authority to investigate and examine the records of that person. The person examined must pay the reasonably incurred costs of the examination.

(c) Except as provided in section 42(a)(2) of this chapter, the director must give the licensee forty-five (45) days written notice before conducting an onsite examination.

(d) If the director determines, based on the licensee's financial statements and past history of operations in Indiana, that an onsite examination is unnecessary, the director may waive the onsite examination.

(e) If the director concludes that an onsite examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of such examination in accordance with the fee schedule adopted under IC 28-11-3-5.

(f) An onsite examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. In lieu of an onsite examination, a director may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm. A report accepted under this subsection shall be considered, for all purposes, to be an official report of the director.

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(g) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any licensee that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

SECTION 184. IC 28-8-4-52 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 52. ~~The provisions of~~ **Except as otherwise provided,** IC 4-21.5 ~~shall apply to any hearing afforded under this chapter.~~ **applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County.**

SECTION 185. IC 28-8-5-11, AS AMENDED BY P.L.90-2008, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. (a) A person shall not engage in the business of cashing checks for consideration without first obtaining a license.

(b) Each application for a license shall be in writing in such form as the director may prescribe and shall include all of the following:

(1) The following information pertaining to the applicant:

(A) Name.

(B) Residence address.

(C) Business address.

(2) The following information pertaining to any individual described in section 12(b)(1) of this chapter:

(A) Name.

(B) Residence address.

(C) Business address.

(D) Whether the person:

(i) is, at the time of the application, under indictment for a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction; or

(ii) has been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or~~

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~~misrepresentation~~ under the laws of Indiana or any other jurisdiction.

(3) The address where the applicant's office or offices will be located. If any business, other than the business of cashing checks under this chapter, will be conducted by the applicant or another person at any of the locations identified under this subdivision, the applicant shall indicate for each location at which another business will be conducted:

(A) the nature of the other business;

(B) the name under which the other business operates;

(C) the address of the principal office of the other business;

(D) the name and address of the business's resident agent in Indiana; and

(E) any other information that the director may require.

(4) Such other data, financial statements, and pertinent information as the director may require.

(c) The application shall be filed with a nonrefundable fee fixed by the department under IC 28-11-3-5.

SECTION 186. IC 28-8-5-12, AS AMENDED BY P.L.90-2008, SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 12. (a) The department shall determine the financial responsibility, business experience, character, and general fitness of the applicant before issuing the license.

(b) The department may refuse to issue a license for any of the following reasons:

(1) Any of the following has been convicted of a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction:

(A) An executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant.

(B) Any person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant.

(2) The application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(c) The director of the department may request evidence of compliance with this section by the licensee at:

(1) the time of application;

(2) the time of renewal of the licensee's license; or

(3) any other time considered necessary by the director.

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(d) For purposes of subsection (c), evidence of compliance may include:

(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in subsection (b)(1);

(2) credit histories; and

(3) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (c). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

SECTION 187. IC 28-8-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 15. A license ~~may~~ **must** be renewed for twelve (12) months upon the filing of a renewal application **as prescribed by the director of the department. The department shall prescribe a form for the renewal application. To be accepted for processing, the license renewal fee as described in this section and all information and documents requested by the director of the department must be filed with the renewal application.** Each licensee shall pay to the department before July 1 of each year a fee fixed by the department under IC 28-11-3-5 as a renewal fee. The department may fix a daily late fee under IC 28-11-3-5 for a renewal license that is not received before July 1.

SECTION 188. IC 28-8-5-18.4, AS ADDED BY P.L.217-2007, SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 18.4. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, ~~any of the following apply:~~

~~(1) The licensee, or any individual described in section 11(b)(2) of this chapter, is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.~~

~~(2)~~ the licensee, or any individual described in section 11(b)(2) of

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this chapter, has been convicted of or pleaded guilty or nolo contendere to a felony ~~involving fraud, deceit, or misrepresentation~~ under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 11(b)(2)(D) of this chapter:

(1) not later than thirty (30) days after the licensee or individual described in section 11(b)(2) of this chapter

~~(A) has been put on notice of the indictment; or~~

~~(B)~~ has been convicted of or pleaded guilty or nolo contendere to the felony; **or**

~~whichever applies; or~~

(2) if the licensee's next license renewal fee under section 15 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 15 of this chapter.

SECTION 189. IC 28-8-5-19, AS AMENDED BY P.L.57-2006, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 19. (a) The department may examine the books, accounts, and records of a licensee and may make investigations to determine compliance.

(b) If the department examines the books, accounts, and records of a licensee, the licensee shall pay all reasonably incurred costs of the examination in accordance with the fee schedule adopted under IC 28-11-3-5.

(c) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any licensee that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

SECTION 190. IC 28-8-5-21.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE UPON PASSAGE]: **Sec. 21.1. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County.**

SECTION 191. IC 28-8-5-22.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 22.5. (a) A license issued by the department under this chapter shall be revoked by the department if the person fails to:

(1) file any renewal ~~form required~~ **applications prescribed** by the ~~department,~~ **director;** or

(2) pay any license renewal fee described under section 15 of this chapter;

~~for a period of at least two (2) years.~~ **more than sixty (60) days after the date the renewal is due.**

(b) A person whose license is revoked under this section may:

(1) pay all delinquent fees and apply for a new license; or

(2) appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

SECTION 192. IC 28-10-1-1, AS AMENDED BY P.L.182-2009(ss), SECTION 372, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. A reference to a federal law or federal regulation in ~~IC 28~~ **this title** is a reference to the law or regulation in effect December 31, ~~2008.~~ **2009.**

SECTION 193. IC 28-11-1-5, AS AMENDED BY P.L.57-2006, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) A member appointed by the governor under section 3(a)(2) of this chapter serves a term of four (4) years but at the pleasure of the governor.

(b) The governor may reappoint a member appointed under section 3(a)(2) of this chapter.

(c) Notwithstanding the expiration of a member's term, the member continues to serve until a successor is appointed and qualified.

SECTION 194. IC 28-11-1-9.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 9.1. (a) This section applies to a meeting of the members at which at least four (4) members are physically present at the place where the meeting is conducted.**

(b) A member may participate in a meeting of the members by

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using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) A member who participates in a meeting under subsection (b) may act as a voting member on official action only if that official action is voted upon by at least four (4) members of the board physically present at the place where the meeting is conducted.

(e) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who:

(1) was physically present at the place where the meeting was conducted;

(2) participated in the meeting by using a means of communication described in subsection (b); and

(3) was absent.

(f) A member who participates in a meeting under subsection (b) may not cast the deciding vote on any official action.

SECTION 195. IC 28-11-1-15, AS ADDED BY P.L.217-2007, SECTION 93, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 15. If the governor:

(1) declares, under IC 10-14-3-12, a state of emergency in all or part of Indiana; or

(2) in the absence of a declaration under subdivision (1), gives prior approval to the director;

the director is authorized to take necessary and appropriate action to establish or preserve safe and sound methods of banking and **other action the director considers necessary under the circumstances** to **promote and** safeguard the interests of depositors, debtors, consumers, ~~and~~ creditors, **or the public.**

SECTION 196. IC 28-11-3-1, AS AMENDED BY P.L.90-2008, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) The department shall examine the affairs of every financial institution as often as the department considers necessary. Examinations may be made without notice to the institution to be examined.

(b) In making an examination, the department may examine any of the officers or agents of the institution under oath.

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(c) The department may require an independent audit by a certified public accountant, subject to the standards the department determines.

(d) The department, in the classification of assets, may disregard the amount of an asset in its analysis of capital adequacy of the financial institution until the amount of the asset is recovered.

(e) After the examiners complete the examination of a financial institution, the examiners:

(1) shall submit their written findings and recommendations to:

(A) the board of directors; and

(B) other parties authorized by the board of directors and approved by the director; and

(2) may confer with the parties listed in subdivision (1) on the findings and recommendations.

(f) Upon the conclusion of an examination, a full, true, and detailed report of the condition of the financial institution shall be made to the department by the examiners in the form prescribed by the department.

(g) A financial institution subject to examination by the department may not cause, by contract or otherwise, any data processing or other similar service to be performed, either on or off its premises, until written assurances are furnished to the department by the financial institution and the entity providing the service that the performance of the service will be subject to regulation and examination by the department to the same extent as if the service was being performed by the financial institution on its own premises. Entities that provide data processing or other similar services to more than one (1) financial institution need only file one (1) written assurance to cover all financial institutions to which the entity provides services.

(h) The report of an examination conducted under this section:

(1) is the exclusive property of the department; and

(2) except as provided in subsection (i), shall not be distributed, published, or duplicated without the prior authorization of the director.

(i) A financial institution that is or seeks to become a member of the Federal Home Loan Bank System may provide a copy of a report of an examination conducted by the department to the Federal Home Loan Bank for the confidential use of the Federal Home Loan Bank if the director and the Federal Home Loan Bank have entered into a written agreement that provides that the report of the examination:

(1) remains the property of the department; and

(2) is not:

(A) subject to inspection under IC 5-14-3;

(B) subject to subpoena;

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(C) subject to discovery; or

(D) admissible in evidence in any civil action.

(j) Except as provided in subsection (i), a person who knowingly or intentionally possesses, distributes, publishes, or duplicates a report of an examination conducted under this section without the prior authorization of the director commits a Class B misdemeanor.

(k) If a financial institution contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the financial institution and be subject to the department's routine examination procedures, the person that provides the service to the financial institution shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any financial institution that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

SECTION 197. IC 28-11-3-5, AS AMENDED BY P.L.57-2006, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) As used in this section, "assets" means the assets of a financial institution as disclosed by a report made by the financial institution at the end of the year immediately preceding the fiscal year in which a fee is fixed under this section.

(b) The department shall fix and collect, on an annual basis, a schedule of fees for the services rendered and the duties performed by the department in the administration of financial institutions.

(c) The fees may not exceed the comparative cost to the department in the administration of financial institutions. In determining the costs, the department may classify the assets of financial institutions and fix fees at different rates for the examination, supervision, regulation, and liquidation of the classes of assets, based on the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions.

(d) The fees shall be charged and collected until changed or modified by the department. A change or modification of fees may not be adopted more often than one (1) time each state fiscal year. A modified schedule of fees is effective on the first day of the state fiscal year following the fiscal year in which the modification is adopted.

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(e) Administrative charges included in the fee are in addition to charges collected under other statutes.

(f) If the reasonable costs of performing an examination of a financial institution exceed the fees established under this section, the financial institution shall pay the excess costs not later than thirty (30) days after receipt of an invoice from the department. The department may impose a fee, in an amount fixed by the department under this section, for each day that the excess costs are not paid, beginning on the first day after the thirty (30) day period described in this subsection.

SECTION 198. IC 28-11-4-3, AS AMENDED BY P.L.217-2007, SECTION 98, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) If the director determines that a **current or former** director, ~~an~~ officer, or ~~an~~ employee of a financial institution has:

(1) committed a violation of a statute, a rule, a final cease and desist order, any condition imposed in writing by the director in connection with the grant of any application or other request by the financial institution, or any written agreement between the financial institution and the director **or the department;**

(2) engaged or participated in an unsafe or unsound practice in connection with the financial institution;

(3) committed or engaged in an act, an omission, or a practice that constitutes a breach of fiduciary duty as director, officer, or employee; or

(4) been convicted of, has pleaded guilty or nolo contendere to, or is under indictment for, a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;

the director, subject to subsection (b), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any financial institution, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach specified in subdivision (a) is subject to the authority of the director under subsection (a) if the director finds any of the following:

(1) By reason of the violation, practice, or breach, the financial institution has suffered or will probably suffer substantial financial loss or other damage.

(2) The interests of the financial institution's depositors could be

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seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty.

(3) The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.

(4) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for the safety and soundness of the financial institution.

(c) A person who:

(1) is under indictment for;

(2) has been convicted of; or

(3) has pleaded guilty or nolo contendere to;

a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction may not serve as a director, an officer, or an employee of a financial institution, or serve in any similar capacity, unless the person obtains the written consent of the ~~department.~~ **director.**

(d) A financial institution that willfully permits a person to serve the financial institution in violation of subsection (b) or (c) is subject to a civil penalty of five hundred dollars ($500) for each day the violation continues. A civil penalty paid under this subsection must be deposited into the financial institutions fund established by IC 28-11-2-9.

SECTION 199. IC 28-11-4-4, AS AMENDED BY P.L.57-2006, SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) A notice issued under this chapter must:

(1) contain a statement of the facts constituting the alleged practice, violation, or breach;

(2) state the facts alleged in support of the violation, practice, or breach;

(3) state the director's intention to enter an order under section 3(a) of this chapter;

(4) be delivered to the board of directors of the financial institution;

(5) be delivered to the officer, director, or employee concerned; and

(6) specify the procedures that must be followed to initiate a hearing to contest the facts alleged.

(b) If a hearing is requested within ten (10) days after service of the written notice, the ~~director or designee of the director~~ **department** shall hold a hearing concerning the alleged practice, violation, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The ~~director or designee of the director,~~ **department,** based on the evidence presented at the hearing, shall

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enter:

(1) a final order under section 7 of this chapter for the immediate removal of the officer, director, or employee affected;

(2) a final order under section 7 of this chapter prohibiting further participation by the officer, director, or employee, in any manner, in the conduct of affairs of any financial institution;

(3) a final order under section 7 of this chapter requiring the financial institution and its directors, officers, employees, and agents to:

(A) cease and desist from the practice or violation; or

(B) take affirmative action to correct the conditions resulting from the practice or violation;

(4) a final order consisting of any combination of orders described in subdivisions (1) through (3);

(5) a reprimand of the individuals, entities, or other persons concerned; or

(6) a dismissal of the entire matter.

(c) If no hearing is requested within the time specified in subsection (b), the director may proceed to issue a final order described in subsection (b)(1), (b)(2), (b)(3), or (b)(4) on the basis of the facts set forth in the written notice.

(d) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any financial institution without the approval of the director.

(e) The director may, for the protection of the financial institution or the interests of its depositors, suspend from office or prohibit from participation in the affairs of the financial institution an officer, a director, or an employee of a financial institution who is the subject of a written notice served by the director under ~~subsection (a).~~ **section 3(a) of this chapter.** A suspension or prohibition under this subsection becomes effective upon service of the notice. Unless stayed by a court in a proceeding authorized by subsection (f), the ~~notice~~ **suspension or prohibition** shall remain in effect pending completion of the ~~proceeding under~~ **proceedings related to** the written notice served under ~~subsection (a)~~ **section 3(a) of this chapter** and until the effective date of an order entered by the ~~director~~ **department** under subsection (b) or **the director under subsection** (c). Copies of the notice shall also be served upon the financial institution or subsidiary of which the person is an officer, a director, or an employee.

(f) Not more than ten (10) days after an officer, a director, or an employee has been suspended from office or prohibited from

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participation in the conduct of the affairs of the financial institution or subsidiary under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings ~~under subsection (b),~~ **related to the notice served under section 3(a) of this chapter,** and the court may stay the suspension of prohibition.

(g) The department shall maintain an official record of a proceeding under this chapter.

SECTION 200. IC 28-11-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) If the ~~department~~ **director** determines that an alleged practice, a violation, or an act specified in a notice served under this chapter is likely to:

(1) cause insolvency of the financial institution;

(2) cause substantial dissipation of assets or earnings of the financial institution; or

(3) otherwise seriously prejudice the interests of the depositors of the financial institution;

the ~~department~~ **director** may issue a temporary order without a hearing.

(b) A temporary order may:

(1) require the financial institution to cease and desist from the practice or violation;

(2) require the financial institution to take affirmative action to correct the conditions resulting from the practice or violation; or

(3) suspend or prohibit a director, an officer, or an employee from participating in the conduct of the affairs of the financial institution.

(c) A temporary order is effective upon service and remains effective and enforceable until the earliest of the following:

(1) The issuance of an injunction by a court under subsection (d).

(2) The dismissal of the charges by the department.

(3) The effective date of a final order under section 7 of this chapter.

(d) A financial institution served with a temporary order under this section may apply to a court having jurisdiction for an injunction to stay, modify, or vacate the order.

SECTION 201. IC 28-11-4-7, AS AMENDED BY P.L.90-2008, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) If, **after a hearing held under section 4(b) of this chapter,** the department finds that the conditions specified in section 2 or 3 of this chapter have been established, the department

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may issue a final order. **If a hearing is not requested within the time specified in section 4(b) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 3(a) of this chapter.**

(b) **Unless the director has entered into a consent agreement described in section 5 of this chapter,** a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(c) A final order may do any of the following:

(1) Require the financial institution and its directors, officers, employees, and agents to do any of the following:

(A) Cease and desist from the practice or violation.

(B) Take affirmative action to correct the conditions resulting from the practice or violation.

(2) Suspend or prohibit a director, an officer, or an employee from participating in the affairs of a financial institution or subsidiary.

(3) Impose a civil penalty not to exceed the amount specified in section 9 of this chapter.

(d) A final order shall be issued in writing within ninety (90) days after conclusion of ~~the~~ **a** hearing **held under section 4(b) of this chapter,** unless this period is waived or extended with the written consent of all parties or for good cause shown.

(e) If the financial institution, director, or officer does not appear individually or by a duly authorized representative at ~~the~~ **a** hearing **held under section 4(b) of this chapter,** the financial institution, director, or officer is considered to have consented to the issuance of a final order.

(f) The director may keep a final order confidential if the director determines that the immediate release of the order would endanger:

(1) the stability of the financial institution; or

(2) the security of depositors' funds.

However, after two (2) years after the date of its issuance, a final order is no longer confidential under IC 28-1-2-30.

SECTION 202. IC 28-11-4-10, AS AMENDED BY P.L.90-2008, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. The ~~department~~ **director** may enforce any of the following by applying for appropriate relief to a court having jurisdiction:

(1) An order issued under this chapter.

(2) A written agreement entered into by the department **or the director** and:

(A) a financial institution; or

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(B) any director, officer, employee, or agent of the financial institution.

(3) Any condition imposed in writing by the department **or the director** on:

(A) a financial institution; or

(B) any director, officer, employee, or agent of the financial institution;

in connection with any application, notice, or request concerning the financial institution.

SECTION 203. IC 28-11-4-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. An individual who:

(1) ~~was removed~~ **is suspended or prohibited** from ~~office~~ **participating in the conduct of the affairs of a financial institution** under section 6 or 7 of this chapter; and

(2) after ~~removal,~~ **the suspension or prohibition** knowingly or intentionally participates, directly or indirectly, in the management of the financial institution;

commits a Class D felony.

SECTION 204. IC 28-13-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) An officer may resign at any time by delivering notice:

(1) to the board of directors, its chairman, or the secretary of the corporation; or

(2) if the articles of incorporation or bylaws so provide, to another designated officer.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, the corporation's board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(c) A board of directors may remove any officer at any time with or without cause.

(d) An officer who appoints another officer or assistant officer may remove the appointed officer or assistant officer at any time with or without cause.

(e) If a corporation replaces the chief executive officer of the corporation, the corporation shall give the department written notice of the replacement not later than thirty (30) days after the chief executive officer is replaced.

SECTION 205. IC 28-14-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. A corporate fiduciary

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may deposit funds **into accounts, and** in ~~a depository in which the deposits~~ **amounts, that** are federally insured. A credit union service organization established as a corporate fiduciary under IC 28-14-3-24 may deposit its funds in the credit union or credit unions that control the credit union service organization.

SECTION 206. IC 28-15-2-2, AS AMENDED BY P.L.217-2007, SECTION 103, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

a product, a service, or an investment that is available to or offered by; or

(2) to engage in **mergers, consolidations, reorganizations, or** other activities **or to exercise other powers** authorized for;

federal savings associations domiciled in Indiana.

(b) Subject to this section, savings associations may exercise the rights and privileges that are granted to federal savings associations.

(c) A savings association that intends to exercise any rights and privileges that are:

(1) granted to federal savings associations; but

(2) not authorized for savings associations under:

(A) the Indiana Code (except for this section); or

(B) a rule adopted under IC 4-22-2;

shall submit a letter to the department, describing in detail the requested rights and privileges granted to federal savings associations that the savings association intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter.

(d) The department shall promptly notify the requesting savings association of its receipt of the letter submitted under subsection (c). Except as provided in subsection (f), the savings association may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(e) The department may deny the requested rights and privileges if the department finds that:

(1) federal savings associations in Indiana do not possess the requested rights and privileges;

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(2) the exercise of the requested rights and privileges by the savings association would adversely affect the safety and soundness of the savings association;

(3) the exercise of the requested rights and privileges by the savings association would result in an unacceptable curtailment of consumer protection; or

(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the savings association.

(f) The sixty (60) day period referred to in subsection (d) may be extended by the department based on a determination that the savings association letter raises issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the savings association may exercise the requested rights and privileges only if the savings association receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the savings association's letter; and

(2) if a hearing is convened, the department must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(g) The exercise of rights and privileges by a savings association in compliance with and in the manner authorized by this section does not constitute a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(h) If a savings association receives approval to exercise the requested rights and privileges granted to national savings associations domiciled in Indiana, the department shall determine by order whether all savings associations may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all savings associations will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

(i) If the department denies the request of a savings association under this section to exercise any rights and privileges that are granted to national savings associations, the company may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the savings association is located.

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SECTION 207. IC 32-28-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) As used in this section, "lender" refers to:

(1) an individual;

(2) a supervised financial organization (as defined in ~~IC 24-4.5-1-301);~~ **IC 26-1-4-102.5);**

(3) an insurance company or a pension fund; or

(4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10. When the statement and notice of intention to hold a lien is recorded, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (c) and (d), a lien created under this chapter has priority over a lien created after it.

(c) The lien of a mechanic or materialman does not have priority over the lien of another mechanic or materialman.

(d) The mortgage of a lender has priority over all liens created under this chapter that are recorded after the date the mortgage was recorded, to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5).

(2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(3) Property that is:

(A) owned, operated, managed, or controlled by:

(i) a public utility (as defined in IC 8-1-2-1);

(ii) a municipally owned utility (as defined in IC 8-1-2-1);

(iii) a joint agency (as defined in IC 8-1-2.2-2);

(iv) a rural electric membership corporation formed under IC 8-1-13-4;

(v) a rural telephone cooperative corporation formed under IC 8-1-17; or

(vi) a not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

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SECTION 208. IC 35-45-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) This chapter applies only:

(1) to consumer loans, consumer related loans, consumer credit sales, consumer related sales, and consumer leases, as those terms are defined in IC 24-4.5, subject to adjustment, where applicable, of the dollar amounts set forth in those definitions under IC 24-4.5-1-106;

(2) to any loan primarily secured by an interest in land or sale of an interest in land that is a mortgage transaction (as defined in ~~IC 24-4.5-1-301)~~ **IC 24-4.5-1-301.5)** if the transaction is otherwise a consumer loan or consumer credit sale; and

(3) to any other loan transaction or extension of credit, regardless of the amount of the principal of the loan or extension of credit, if unlawful force or the threat of force is used to collect or to attempt to collect any of the property loaned or any of the consideration for the loan or extension of credit in question.

(b) This chapter applies regardless of whether the contract is made directly or indirectly, and whether the receipt of the consideration is received or is due to be received before or after the maturity date of the loan.

SECTION 209. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2010]: IC 24-4.4-1-203; IC 24-4.4-3-112; IC 24-4.5-1-203; IC 24-4.5-1-301; IC 24-4.5-1-303; IC 24-4.5-2-104; IC 24-4.5-3-103; IC 24-4.5-3-104; IC 24-4.5-3-503.5; IC 24-4.5-3-506; IC 24-4.5-3-507; IC 24-4.5-6-103.5; IC 24-4.5-6-114; IC 28-1-29-7; IC 28-1-29-10; IC 28-1-29-12; IC 28-7-1-26; IC 28-15-11-13.

SECTION 210. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 328, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective date in SECTIONS 111 through 112 with "[EFFECTIVE UPON PASSAGE]".

Replace the effective date in SECTION 135 with "[EFFECTIVE UPON PASSAGE]".

Replace the effective date in SECTION 174 with "[EFFECTIVE UPON PASSAGE]".

Replace the effective date in SECTION 183 with "[EFFECTIVE UPON PASSAGE]".

Replace the effective date in SECTION 189 with "[EFFECTIVE UPON PASSAGE]".

Page 16, line 10, delete "using" and insert "**that exclusively uses**".

Page 16, line 12, delete "exclusively".

Page 18, line 30, delete "regularly".

Page 21, line 17, delete "offers to negotiate" and insert "**in offering or negotiating**".

Page 21, line 18, delete "IC 24-5.5" and insert "**IC 24-4.5**".

Page 21, between lines 38 and 39, begin a new paragraph and insert:

"**(22) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.**".

Page 21, line 39, delete "(22)" and insert "**(23)**".

Page 22, line 4, delete "(23)" and insert "**(24)**".

Page 22, line 10, delete "(24)" and insert "**(25)**".

Page 22, line 12, delete "(25)" and insert "**(26)**".

Page 22, line 17, delete "(26)" and insert "**(27)**".

Page 22, line 21, delete "(27)" and insert "**(28)**".

Page 22, line 31, delete "(28)" and insert "**(29)**".

Page 22, line 38, delete "(29)" and insert "**(30)**".

Page 23, line 14, delete "(30)" and insert "**(31)**".

Page 23, line 26, delete "(31)" and insert "**(32)**".

Page 23, line 29, delete "(32)" and insert "**(33)**".

Page 24, line 5, delete "(33)" and insert "**(34)**".

Page 24, line 12, delete "(34)" and insert "**(35)**".

Page 26, line 27, after "director" insert "**or the department**".

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Page 37, line 1, delete "director;" and insert "**director or the department;**".

Page 38, line 2, delete "404.1(1)" and insert "**404.4(1)**".

Page 38, line 5, delete "and".

Page 38, line 7, delete "alleged." and insert "**alleged; and**

(h) if the director suspends or prohibits an officer, a director, or an employee of the creditor from participating in the affairs of the creditor, as described in subsection (5), include a statement of the suspension or prohibition.".

Page 38, line 9, delete "director or designee of the" and insert "**department**".

Page 38, line 10, delete "director".

Page 38, line 12, delete "director or" and insert "**department,**".

Page 38, line 13, delete "designee of the director,".

Page 38, line 18, delete "described in subsection (2)" and insert "**under section 404.4 of this chapter**".

Page 38, line 28, delete "subsection (1)." and insert "**section 404.1(1) of this chapter.**".

Page 38, line 30, delete "notice." and insert "**notice under section 404.1(1) of this chapter.**".

Page 38, line 31, delete "notice" and insert "**suspension or prohibition**".

Page 38, line 32, delete "proceeding under the written notice served under subsection" and insert "**proceedings related to the notice served under section 404.1(1) of this chapter**".

Page 38, line 33, delete "(1)".

Page 38, line 33, delete "director" and insert "**department**".

Page 38, line 34, after "or" insert "**the director under subsection**".

Page 38, line 42, delete "under" and insert "**related to the written notice served under section 404.1(1) of this chapter,**".

Page 39, line 1, delete "subsection (2),".

Page 39, line 17, delete "If the director" and insert "**If, after a hearing described in section 404.2(2) of this chapter, the department**".

Page 39, line 19, delete "director may issue a final order." and insert "**department may issue a final order. If a hearing is not requested within the time specified in section 404.2(2) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 404.1(1) of this chapter.**".

Page 39, line 20, delete "A" and insert "**Unless the director has entered into a consent agreement described in section 404.3 of this chapter, a**".

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Page 39, delete lines 22 through 29, begin a new paragraph and insert:

"**(3) In a final order under this section, the department or the director, as appropriate, may order one (1) or more of the following with respect to an officer, a director, or an employee of a creditor:**

(a) The removal of the officer, director, or employee from the person's office, position, or employment.

(b) A prohibition against any participation by the officer, director, or employee in the conduct of the affairs of any creditor.

(c) If the subject of the order is an officer or a director of a creditor, and subject to section 404.6 of this chapter, the imposition of a civil penalty not to exceed fifteen thousand dollars ($15,000) for each practice, violation, or act that:

(i) is described in section 404.1 of this chapter; and

(ii) is found to exist by the department or the director.".

Page 39, line 31, delete "the hearing," insert "**a hearing held under section 404.2(2) of this chapter,**".

Page 39, line 35, delete "the hearing," insert "**a hearing held under section 404.2(2) of this chapter,**".

Page 40, line 1, delete "at the expiration of ten (10) days" and insert "**on the eleventh day**".

Page 40, line 11, delete "A civil penalty imposed" and insert "**The director or the department, as appropriate, shall consider the following factors in determining the amount of a civil penalty that should be assessed against a director or an officer in a final order issued under section 404.4(3)(c) of this chapter:**".

Page 40, delete lines 12 through 18.

Page 40, line 26, delete "(3)" and insert "**(2)**".

Page 40, line 27, delete "404.4" and insert "**404.4(3)(c)**".

Page 40, line 29, delete "(4)" and insert "**(3)**".

Page 40, line 33, delete "department" and insert "**director**".

Page 40, line 37, after "department" insert "**or the director**".

Page 40, line 39, after "department" insert "**or the director**".

Page 50, line 5, after "rule" insert "**or guidance**".

Page 52, line 25, delete "using" insert "**that exclusively uses**".

Page 52, line 27, delete "exclusively".

Page 52, line 32, delete "an examination of" and insert "**examinations or other**".

Page 52, line 33, delete "by the department" and insert "**conducted by the department and**".

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Page 56, line 40, delete "offers to negotiate" and insert "**in offering or negotiating**".

Page 56, line 41, delete "IC 24-5.5" and insert "**IC 24-4.5**".

Page 69, line 4, after "director" insert "**or the department**".

Page 77, line 15, delete "through the NMLSR".

Page 77, line 16, after "year." insert "**A license issued under section 502.1 of this chapter must be renewed through the NMLSR.**".

Page 81, line 38, after "consumer loan" insert ".".

Page 81, line 39, strike "(IC 24-4.5-3-105).".

Page 90, delete lines 21 through 27.

Page 90, line 37, delete "director;" and insert "**director or the department;**".

Page 91, line 39, delete "119(a)" and insert "**122(a)**".

Page 92, line 9, delete "director or" and insert "**department**".

Page 92, line 10, delete "designee of the director".

Page 92, line 12, delete "director" and insert "**department,**".

Page 92, line 13, delete "or designee of the director,".

Page 92, line 29, delete "subsection (a)." and insert "**section 119(a) of this chapter.**".

Page 92, line 31, delete "notice." and insert "**notice under section 119(a) of this chapter.**".

Page 92, line 32, delete "notice" and insert "**suspension or prohibition**".

Page 92, line 33, delete "a proceeding under subsection (b)" and insert "**the proceedings related to the notice served under section 119(a) of this chapter**".

Page 92, line 34, delete "director" and insert "**department**".

Page 92, line 35, after "(b) or" insert "**the director under subsection**".

Page 93, line 2, delete "under" and insert "**related to the notice served under section 119(a) of this chapter.**".

Page 93, line 3, delete "subsection (b).".

Page 93, line 20, delete "if the director" and insert "**if, after a hearing described in section 120(b) of this chapter, the department**".

Page 93, line 22, delete "director may issue a final order." and insert "**department may issue a final order. If a hearing is not requested within the time specified in section 120(b) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 119(a) of this chapter.**".

Page 93, line 23, delete "A" and insert "**Unless the director has**

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entered into a consent agreement described in section 121 of this chapter, a".

Page 93, delete lines 25 through 34, begin a new paragraph and insert:

"**(c) In a final order under this section, the department or the director, as appropriate, may order one (1) or more of the following with respect to an officer, a director, or an employee of a creditor:**

(1) The removal of the officer, director, or employee from the person's office, position, or employment.

(2) A prohibition against any participation by the officer, director, or employee in the conduct of the affairs of any creditor.

(3) If the subject of the order is an officer or a director of a creditor, and subject to section 124 of this chapter, the imposition of a civil penalty not to exceed fifteen thousand dollars ($15,000) for each practice, violation, or act that:

(A) is described in section 119 of this chapter; and

(B) found to exist by the department or the director.".

Page 93, line 36, delete "hearing," and insert "**hearing held under section 120(b) of this chapter,**".

Page 93, line 40, delete "the hearing," and insert "**a hearing held under section 120(b) of this chapter,**".

Page 94, line 12, delete "served on the creditor and the officer," and insert "**served.**".

Page 94, line 13, delete "director, or employee.".

Page 94, line 22, delete "The director may impose".

Page 94, delete lines 23 through 26.

Page 94, line 27, delete "(b) The director" and insert "**The director or the department, as appropriate,**".

Page 94, run in lines 22 through 27.

Page 94, line 29, delete "director, an officer, or an employee:" and insert "**director or an officer under section 122(c)(3) of this chapter:**".

Page 94, line 37, delete "(c)" and insert "**(b)**".

Page 94, line 37, delete "director, an officer, or an" and insert "**director or an officer**".

Page 94, line 38, delete "employee".

Page 94, line 40, delete "(d)" and insert "**(c)**".

Page 95, line 2, delete "department" and insert "**director**".

Page 95, line 6, after "by" insert "**the director or**".

Page 95, line 7, delete "the" and insert "**a**".

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Page 95, line 8, after "by" insert "**the director or**".

Page 95, line 9, delete "the" and insert "**a**".

Page 99, line 41, delete "." and insert ", **subject to the identification verification requirements set forth in subsection (12).**".

Page 101, line 4, after "number." insert "**Documentation under this subdivision may be in electronic form and the numbers may be truncated.**".

Page 101, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 88. IC 24-5-23.5-4, AS ADDED BY P.L.52-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) As used in this chapter, "mortgage loan" means a loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(b) The term includes the following:

(1) A home loan subject to IC 24-9.

(2) A loan described in IC 24-9-1-1, to the extent allowed under federal law.

(3) A first lien mortgage transaction (as defined in ~~IC 24-4.4-1-301(6))~~ **IC 24-4.4-1-301)** subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.".

Page 107, line 33, after "department" insert ".".

Page 107, line 33, strike "under".

Page 107, strike line 34.

Page 107, line 35, after "under" insert "**IC 24-4.4 or**".

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Page 120, line 3, delete "(6)".

Page 120, line 3, strike "Whether the public convenience and advantage will be".

Page 120, strike line 4.

Page 120, line 5, reset in roman "(6)".

Page 120, line 5 delete "(7)".

Page 120, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 114. IC 28-1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Before a proposed disposition described in section 1 of this chapter is submitted to a vote of the shareholders, the resolution proposing the disposition shall be submitted for the approval of the department.

(b) The department may approve a resolution if the corporation ~~(1)~~ has and will have assets in excess of the corporation's liabilities and **either of the following applies:**

(1) The corporation intends to merge out of existence under IC 28-1-7-1.

(2) **The corporation** intends to voluntarily dissolve under IC 28-1-9.

(c) If the department approves a resolution submitted under this section, the department shall:

(1) write or stamp on the resolution:

(A) the words "Approved by the Department of Financial Institutions of the State of Indiana"; and

(B) the date of the approval; and

(2) place the impression of the seal of the department and the signature of the director or the director's authorized designee beneath the approval stamp.".

Page 129, line 8, delete "any class of" and insert "**the**".

Page 150, delete lines 35 through 42.

Page 151, delete lines 1 through 22.

Page 153, line 1, delete "providers;" and insert "**debt management companies;**".

Page 153, line 4, delete "licensee." and insert "**person.**

(i) Any person that provides services to a person doing business as a debt management company shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order every person doing business as a

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debt management company that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person refusing the examination; or

(2) otherwise cease conducting business with the person refusing the examination.".

Page 174, line 2, delete "bylaws" and insert "**articles of incorporation**".

Page 191, between lines 11 and 12, begin a new line block indented and insert:

"**(4) Whether the proposed transaction, in the department's judgment and considering the available information under the prevailing circumstances, will result in an institution that is more favorable to the stakeholders than if the entities were to remain separate.**".

Page 191, line 12, delete "(4)" and insert "**(5)**".

Page 191, line 17, delete "(5)" and insert "**(6)**".

Page 196, line 6, delete "renewal".

Page 196, line 6, after "license" insert "**renewal**".

Page 196, line 6, reset in roman "fee".

Page 209, line 23, delete ";" and insert "**or the department;**".

Page 210, line 19, strike "department." and insert "**director.**".

Page 211, line 33, strike "subsection (a)." and insert "**section 3(a) of this chapter.**".

Page 211, line 36, strike "notice" and insert "**suspension or prohibition**".

Page 211, line 37, strike "proceeding under" and insert "**proceedings related to**".

Page 211, line 38, strike "subsection (a)" and insert "**section 3(a) of this chapter**".

Page 211, line 39, strike "director" and insert "**department**".

Page 211, line 39, after "or" insert "**the director under subsection**".

Page 212, line 5, strike "under subsection".

Page 212, line 6, strike "(b)," and insert "**related to the notice served under section 3(a) of this chapter,**".

Page 212, line 18, strike "department" and insert "**director**".

Page 212, line 39, after "If" insert ", **after a hearing held under section 4(b) of this chapter,**".

Page 212, line 41, after "order." insert "**If a hearing is not requested within the time specified in section 4(b) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 3(a) of this**

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chapter.".

Page 213, line 15, strike "the" and insert "**a**".

Page 213, line 15, delete "," and insert "**held under section 4(b) of this chapter,**".

Page 213, line 18, after "at" strike "the" and insert "**a**".

Page 213, line 18, delete "," and insert "**held under section 4(b) of this chapter,**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 328 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 328 be amended to read as follows:

Page 45, delete lines 14 through 25, begin a new paragraph and insert:

"**(6) If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:**

(a) discontinue receiving one (1) or more services from the person; or

(b) otherwise cease conducting business with the person.".

Page 86, delete lines 1 through 12, begin a new paragraph and insert:

"**(7) If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination**

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procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:

(a) discontinue receiving one (1) or more services from the person; or

(b) otherwise cease conducting business with the person.".

Page 105, delete lines 24 through 34, begin a new paragraph and insert:

"**(h) If a lessor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the lessor and be subject to the department's routine examination procedures, the person that provides the service to the lessor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any lessor that receives services from the person refusing the examination to:**

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.".

Page 107, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 96. IC 27-7-3-15.5, AS AMENDED BY P.L.105-2009, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. (a) This section applies to a transaction that:

(1) is a single family residential:

(A) first lien purchase money mortgage transaction; or

(B) refinancing transaction; and

(2) is closed after December 31, 2009.

(b) Not later than September 1, 2009, the department shall establish and maintain an electronic system for the collection and storage of the following information concerning any of the following persons that have participated in or assisted with a transaction to which this section applies, or that will participate in or assist with a transaction to which

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this section applies:

(1) The name and license number (under IC 23-2-5) of each loan brokerage business involved in the transaction.

(2) The name and **license or** registration number ~~(under IC 23-2-5)~~ of ~~each~~ **any mortgage loan** originator **who is:**

(A) either licensed or registered under state or federal law as a mortgage loan originator consistent with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221 Title V); and

(B) involved in the transaction.

(3) The name and license number (under IC 25-34.1) of each:

(A) principal broker; and

(B) salesperson or broker-salesperson, if any;

involved in the transaction.

(4) The:

(A) name of; and

(B) code assigned by the National Association of Insurance Commissioners (NAIC) to;

each title insurance underwriter involved in the transaction.

(5) The name and license number (under IC 27-1-15.6) of each title insurance agency and agent involved in the transaction as a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

(6) The name and:

(A) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or

(B) license number (under IC 25-34.1) of each broker;

who appraises the property that is the subject of the transaction.

(7) The name of the mortgagee and, if the mortgagee is required to be licensed under ~~(A)~~ IC 24-4.4, ~~or (B) IC 24-4.5-3-502;~~ the license number of the mortgagee.

(8) In the case of a first lien purchase money mortgage transaction, the name of the seller of the property that is the subject of the transaction.

(9) In the case of a first lien purchase money mortgage transaction, the name of the buyer of the property that is the subject of the transaction.

(10) The:

(A) name; and

(B) license number, certificate number, registration number, or other code, as appropriate;

of any other person that participates in or assists with a transaction to which this section applies, as the department may

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prescribe.

(c) The system established by the department under this section must include a form that:

(1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to do the following:

(A) Input information identifying the property that is the subject of the transaction by lot or parcel number, street address, or some other means of identification that the department determines:

(i) is sufficient to identify the property; and

(ii) is determinable by the closing agent.

(B) Subject to subsection (d) and to the extent determinable, input the information described in subsection (b) with respect to each person described in subsection (b) that participates in or assists with the transaction.

(C) Respond to the following questions:

(i) "On what date did you receive the closing instructions from the creditor in the transaction?".

(ii) "On what date did the transaction close?".

(D) Submit the form electronically to a data base maintained by the department.

(d) Not later than the time of the closing, each person described in subsection (b), other than a person described in subsection (b)(8) or (b)(9), shall provide to the closing agent in the transaction the person's:

(1) legal name; and

(2) license number, certificate number, registration number, or NAIC code, as appropriate;

to allow the closing agent to comply with subsection (c)(2)(B). A person described in subsection (b)(7) shall provide the information required by this subsection for any person described in subsection (b)(6) that appraises the property that is the subject of the transaction on behalf of the person described in subsection (b)(7). A person described in subsection (b)(3)(B) who is involved in the transaction may provide the information required by this subsection for a person described in subsection (b)(3)(A) that serves as the principal broker for the person described in subsection (b)(3)(B). In the case of a first lien purchase money mortgage transaction, the closing agent shall determine the information described in subsection (b)(8) and (b)(9) from the HUD-1 settlement statement.

(e) Except for a person described in subsection (b)(8) or (b)(9), a person described in subsection (b) who fails to comply with subsection

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(d) is subject to a civil penalty of one hundred dollars ($100) for each closing with respect to which the person fails to comply with subsection (d). The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the person in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(f) Subject to subsection (g), the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

(1) each entity described in IC 4-6-12-4; and

(2) the homeowner protection unit established under IC 4-6-12-2.

(g) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

(1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and

(2) contained in the data base described in subsection (c)(2)(D);

except to the extent required or authorized by state or federal law.

(h) The department may adopt rules under IC 4-22-2 to implement this section. Rules adopted by the department under this subsection may establish procedures for the department to:

(1) establish;

(2) collect; and

(3) change as necessary;

an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section.

(i) If the department adopts a rule under IC 4-22-2 to establish an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section, as allowed under subsection (h), the department may:

(1) require the fee to be paid:

(A) to the closing agent responsible for inputting the information and submitting the form described in subsection (c)(2); and

(B) by the borrower in the transaction;

(2) allow the closing agent described in subdivision (1)(A) to retain a part of the fee collected to cover the closing agent's costs in inputting the information and submitting the form described in

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subsection (c)(2); and

(3) require the closing agent to pay the remainder of the fee collected to the department for deposit in the title insurance enforcement fund established by IC 27-7-3.6-1, for the department's use in establishing and maintaining the electronic system required by this section.".

Page 122, line 11, strike "the".

Page 122, line 15, after "liquidation" insert ",".

Page 154, delete lines 16 through 29, begin a new paragraph and insert:

"**(i) If a person doing business as a debt management company contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the person doing business as a debt management company and be subject to the department's routine examination procedures, the person that provides the service to the person doing business as a debt management company shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any person doing business as a debt management company that receives services from the person refusing the examination to:**

(1) discontinue receiving one (1) or more services from the person refusing the examination; or

(2) otherwise cease conducting business with the person refusing the examination.".

Page 160, delete lines 27 through 38, begin a new paragraph and insert:

"**(c) If an industrial loan and investment company contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the industrial loan and investment company and be subject to the department's routine examination procedures, the person that provides the service to the industrial loan and investment company shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any industrial loan and investment company**

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that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.".

Page 176, delete lines 39 through 42, begin a new paragraph and insert:

"**(b) If a credit union contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the credit union and be subject to the department's routine examination procedures, the person that provides the service to the credit union shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any credit union that receives services from the person refusing the examination to:**

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.".

Page 177, delete lines 1 through 7.

Page 199, delete lines 19 through 29, begin a new paragraph and insert:

"**(f) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any licensee that receives services from the person refusing the examination to:**

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.".

Page 202, delete line 42, begin a new paragraph and insert:

"**(g) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination**

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procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any licensee that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.".

Page 203, delete lines 1 through 10.

Page 206, delete lines 23 through 33, begin a new paragraph and insert:

"**(c) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any licensee that receives services from the person refusing the examination to:**

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.".

Page 209, delete line 42, begin a new paragraph and insert:

"**(k) If a financial institution contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the financial institution and be subject to the department's routine examination procedures, the person that provides the service to the financial institution shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any financial institution that receives services from the person refusing the examination to:**

(1) discontinue receiving one (1) or more services from the

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person; or

(2) otherwise cease conducting business with the person.".

Page 210, delete lines 1 through 11.

Renumber all SECTIONS consecutively.

(Reference is to SB 328 as printed January 27, 2010.)

Senator PAUL

COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 328, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

RIECKEN, Chair

Committee Vote: yeas 9, nays 1.

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