

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 2010 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1528

AN ACT to amend the Indiana Code concerning financial institutions.

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

SECTION 1. IC 24-4.4-1-102, AS AMENDED BY P.L.35-2010, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 **as** in effect December 31, ~~2009~~ **2010**.

SECTION 2. IC 24-4.4-1-201, AS AMENDED BY P.L.1-2009, SECTION 134, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 201. (1) Except as provided in subsection (2), this article applies to a first lien mortgage transaction:

- (a) that is secured by an interest in: ~~land~~
 - (i) a dwelling; or**
 - (ii) residential real estate upon which a dwelling is constructed or intended to be constructed;**

HEA 1528+



C
O
P
Y

- in Indiana; and
 - (b) the closing for which takes place after December 31, 2008.
- (2) This article does not apply to a first lien mortgage transaction if:
- (a) the debtor is not a resident of Indiana at the time the transaction is entered into; and
 - (b) the laws of the debtor's state of residence require that the transaction be made under the laws of the state of the debtor's residence.

SECTION 3. IC 24-4.4-1-202, AS AMENDED BY P.L.35-2010, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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; the Indiana housing and community development authority established by IC 5-20-1-3.
- (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

C
O
P
Y



organization that is majority owned, directly or indirectly, by one (1) or more credit unions.

(8) A first lien mortgage transaction originated by:

(a) a registered mortgage loan originator, when acting for an entity described in subsection (6) or (7); or

(b) an individual who:

(i) performs the duties of a mortgage loan originator for an entity described in subsection (6) or (7); and

(ii) is required to be registered with the NMLSR not later than July 29, 2011.

~~However,~~ A privately insured state chartered credit union shall **also** comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the federal ~~Safe~~ **Secure** 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;

(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.

~~(12) Agencies, instrumentalities, and government owned corporations of The United States, any state or local government, or any agency or instrumentality of any governmental entity,~~ including United States government sponsored enterprises.

(13) A person in whose name a tablefunded transaction is closed, as described in section 301(34)(a) of this chapter. However, the exemption provided by this subsection does not apply if:

(a) the transaction:

(i) is secured by a dwelling that is a mobile home, a

C
O
P
Y



manufactured home, or a trailer; and
(ii) is not also secured by an interest in land; and
(b) the person in whose name the transaction is closed, as described in section 301(34)(a) of this chapter, sells the dwelling to the debtor through a retail installment contract or other similar transaction.

SECTION 4. IC 24-4.4-1-301, AS AMENDED BY P.L.35-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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 **products**, horticultural **products**, viticultural **products**, 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~~ **credit service** charge is made; and

C
O
P
Y



- (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.
- (6) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (7) "Creditor" means a person:
 - (a) that 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 ~~33(a)~~ **(34)(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.

- (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.
- (10) "Director" refers to the director of the department of financial institutions or the director's designee.
- (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 **Office of the** Comptroller of the Currency, the Office of Thrift Supervision, the National Credit

C
o
p
y



Union Administration, and the Federal Deposit Insurance Corporation.

(14) "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) ~~which that~~ constitutes a first lien on a dwelling or ~~on~~ residential real estate **upon which a dwelling is constructed or intended to be constructed. The term does not include a land contract.**

(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.

(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 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

C
O
P
Y



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.~~

(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.

(23) "Mortgage transaction" means:

**C
O
P
Y**



- (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 **on residential real estate upon which a dwelling is constructed or intended to be constructed. The term does not include a land contract.**

(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.

(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.

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

- (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 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

C
O
P
Y



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.

(33) "Revolving first lien mortgage transaction" means 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, finance charges, and other appropriate charges are debited to an account; and
- (c) the debtor has the privilege of paying the balances in installments.

(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, **to the mortgage creditor providing the funding.**

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

(36) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the

C
O
P
Y



buyer.

SECTION 5. IC 24-4.4-2-201, AS AMENDED BY P.L.35-2010, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 201. (1) A creditor or mortgage servicer shall provide, **in writing**, an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ~~ten (10)~~ **calendar seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. **A payoff statement provided by a creditor or mortgage servicer under this subsection must include the date the statement was prepared and the payoff amount as of that date, including an itemization of each fee, charge, or other sum included within the 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 seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** 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 seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** 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, 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

C
O
P
Y



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)~~ **five (5)** business days **(excluding legal public holidays, Saturdays, and Sundays)** 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 **(excluding legal public holidays, Saturdays, and Sundays)** 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. **The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed.** 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 6. IC 24-4.4-2-202 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2011]: **Sec. 202. (1) The creditor shall comply with disclosure requirements applicable to first lien mortgage transactions in the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.).**

HEA 1528+

**C
O
P
Y**



(2) For purposes of subsection (1), disclosures are not required if the transaction is exempt from the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.).

SECTION 7. IC 24-4.4-2-401, AS AMENDED BY P.L.35-2010, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 401. (1) Unless a person subject to this article has first obtained a license under this article from the department and annually maintains the license, the person shall not engage in Indiana as a creditor in first lien mortgage transactions. 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) 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.

~~(3)~~ (4) 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)~~ (5) 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)~~ (6) For the purpose of participating in the NMLSR, the director or the department may:

C
O
P
Y



- (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 8. IC 24-4.4-2-402, AS AMENDED BY P.L.35-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 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 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;
- (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
- (e) other background checks considered necessary by the director.

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

**C
O
P
Y**



(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.

(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.

(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.

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

(10) **Except in a transaction approved under section 406 of this chapter**, a license issued under this section is not assignable or transferable.

SECTION 9. IC 24-4.4-2-406 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 406. (1) As used in this section, "control" means possession of the power directly or indirectly to:**

(a) direct or cause the direction of the management or policies of a creditor, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(b) vote at least twenty-five percent (25%) of the voting securities of a creditor, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(2) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any creditor unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

C
O
P
Y



(3) The period for approval under subsection (2) may be extended:

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

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

(i) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (4);

(ii) the director determines that any material information submitted is substantially inaccurate; or

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

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

(a) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the creditor in a legal and proper manner.

(b) The interests of the owners and creditors of the creditor and the interests of the public generally will not be jeopardized by the proposed change in control.

(5) The director may determine, in the director's discretion, that subsection (2) does not apply to a transaction if the director determines that the direct or beneficial ownership of the creditor will not change as a result of the transaction.

(6) The president or other chief executive officer of a creditor shall report to the director any transfer or sale of securities of the creditor that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the creditor. The report required by this section must be made not later than ten (10) days after the transfer of the securities on the books of the creditor.

(7) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a creditor licensed under this article to apply for a new license under section 401 of this chapter, instead of acquiring control of the

**C
O
P
Y**



licensee under this section.

SECTION 10. IC 24-4.5-1-102, AS AMENDED BY P.L.35-2010, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 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~~ **this article** is a reference to the law as in effect December 31, ~~2009~~ **2010**.

(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 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.

**C
O
P
Y**



(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 11. IC 24-4.5-1-202, AS AMENDED BY P.L.35-2010, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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
 - (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.

C
O
P
Y



(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).

(13) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises.

SECTION 12. IC 24-4.5-1-301.5, AS ADDED BY P.L.35-2010, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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, 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

C
O
P
Y



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 credit service** 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~~); **(IC 24-4.5-6)** a sale of an interest in land which is a first lien 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

C
O
P
Y



(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, 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 **Office of 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;

C
O
P
Y



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 **on** residential real estate **upon which a dwelling is constructed or intended to be constructed. The term does not include a land contract.**

(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 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

C
O
P
Y



- (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~~ **IC 24-4.4** or is made by an employee of a person licensed or exempt from licensing under this article or under ~~IC 24-4.5~~; **IC 24-4.4**, 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~~ **another** 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 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 on residential real estate **upon which a dwelling is constructed or**

C
O
P
Y



intended to be constructed. The term does not include a land contract.

(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;
- (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

**C
O
P
Y**



- 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:
 - (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 with respect to~~ a person who extends consumer credit, **refers to a person who:**

- (a) **extended consumer credit:**
 - (i) more than twenty-five (25) times; or
 - ~~(b)~~ (ii) at least one (1) time for a mortgage transaction secured by a dwelling;
- in the preceding calendar year; **or**

C
O
P
Y



(b) extends or will extend consumer credit:

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

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

in the current calendar year, if a the person did not meet these the numerical standards described in subdivision (a) 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 **on residential real estate upon which a dwelling is constructed or intended to be constructed. The term does not include a land contract.**

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

(44) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

SECTION 13. IC 24-4.5-2-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 103. Definitions in ~~Chapter~~ — The following definitions apply to this article and appear in this ~~Chapter~~ **article** as follows:

"Amount financed"	Section 2-111 111 of this chapter
"Annual percentage rate"	Section 2-304 (2)
"Cash price"	Section 2-110 110 of this chapter
"Consumer credit sale"	Section 2-104 IC 24-4.5-1-301.5(8)
"Consumer lease"	Section 2-106 106 of this chapter

C
O
P
Y



"Consumer related sale"	Section 2-602 602 of this chapter
"Corresponding nominal annual percentage rate"	Section 2-304 (3)
"Credit service charge"	Section 2-109 109 of this chapter
"Goods"	Section 2-105 (1) 105(1) of this chapter
"Home solicitation sale"	Section 2-501 501 of this chapter
"Merchandise certificate"	Section 2-105 (2) 105(2) of this chapter
"Precomputed"	Section 2-105 (7) 105(7) of this chapter
"Revolving charge account"	Section 2-108 108 of this chapter
"Sale of goods"	Section 2-105 (4) 105(4) of this chapter
"Sale of an interest in land"	Section 2-105 (6) 105(6) of this chapter
"Sale of services"	Section 2-105 (5) 105(5) of this chapter
"Seller"	Section 2-107 107 of this chapter
"Services"	Section 2-105 (3) 105(3) of this chapter

SECTION 14. IC 24-4.5-2-202, AS AMENDED BY P.L.35-2010, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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.

HEA 1528+



C
O
P
Y

(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 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 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~~ **credit service** charge; and
- (e) appraisal fees.

C
O
P
Y



SECTION 15. IC 24-4.5-2-209, AS AMENDED BY P.L.35-2010, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 209. (1) Subject to the provisions on rebate upon prepayment (~~IC 24-4.5-2-210~~), **(section 210 of this chapter)**, 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~~), **(section 210 of this chapter)**, 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, **in writing**, an accurate payoff ~~of amount for~~ the consumer credit sale to the debtor within ~~ten (10) calendar~~ **seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. **A payoff statement provided by a creditor or mortgage servicer under this subsection must include the date the statement was prepared and the payoff amount as of that date, including an itemization of each fee, charge, or other sum included within the 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 servicer within ~~ten (10) calendar~~ **seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** 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~~ **seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** 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).

C
O
P
Y



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

(4) As used in this subsection, "mortgage transaction" **does not include a land contract and** means a consumer credit sale in which a mortgage deed of trust, (or a land contract **another equivalent consensual security interest**) that constitutes a lien is created or retained against land upon which there is **constructed or intended to be constructed** 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~~ **(+0) five (5) business days (excluding legal public holidays, Saturdays, and Sundays)** 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 **(excluding legal public holidays, Saturdays, and Sundays)** 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. **The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed.** 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

**C
O
P
Y**

HEA 1528+



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 16. IC 24-4.5-3-209, AS AMENDED BY P.L.35-2010, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (~~IC 24-4.5-3-210~~), (**section 210 of this chapter**), 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~~), (**section 210 of this chapter**), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under ~~IC 24-4.5-3-201~~, **section 201 of this chapter**, 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:

- (a) The loan origination fee allowed under ~~IC 24-4.5-3-201~~, **section 201 of this chapter**.
- (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, **in writing**, an accurate payoff ~~of amount for~~ the consumer loan to the debtor within ~~ten (10) calendar~~ **seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. **A payoff statement provided by a creditor or mortgage servicer under this subsection must include the date the**

C
O
P
Y



statement was prepared and the payoff amount as of that date, including an itemization of each fee, charge, or other sum included within the 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 **seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** 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 **seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** 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~~ **another equivalent consensual security interest**) that constitutes a lien is created or retained against land upon which there is **constructed or intended to be constructed** 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)~~ **five (5) business days (excluding legal public holidays, Saturdays, and Sundays)** 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

C
o
p
y



agent to do so. Not later than thirty (30) business days (**excluding legal public holidays, Saturdays, and Sundays**) 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. **The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed.** 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 17. IC 24-4.5-3-503, AS AMENDED BY P.L.35-2010, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 503. (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, 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;

C
O
P
Y

HEA 1528+



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 **for a person licensed** 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;
- (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
- (e) other background checks considered necessary by the director.

(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.

(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.

(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.

(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) 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.

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

C
O
P
Y

HEA 1528+



(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.

(11) **Except in a transaction approved under section 515 of this chapter**, a license issued under this section is not assignable or transferable.

SECTION 18. IC 24-4.5-3-503.6, AS ADDED BY P.L.35-2010, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 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 **revoked or** 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 **revoked or** 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 **revocation or** suspension to the department for an

C
O
P
Y



administrative review under IC 4-21.5-3.

~~The Pending the decision from a hearing under IC 4-21.5-3 concerning license revocation or suspension, a license remains in force. pending the decision resulting from the hearing under IC 4-21.5-3.~~

SECTION 19. IC 24-4.5-3-515 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 515. (1) As used in this section,**

"control" means possession of the power directly or indirectly to:

(a) direct or cause the direction of the management or policies of a creditor, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(b) vote at least twenty-five percent (25%) of the voting securities of a creditor, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(2) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any creditor unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(3) The period for approval under subsection (2) may be extended:

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

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

(i) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (4);

(ii) the director determines that any material information submitted is substantially inaccurate; or

(iii) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the

**C
O
P
Y**



organization, individual, or individuals.

(4) The department shall issue a notice approving the application only after the department is satisfied that both of the following apply:

(a) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the creditor in a legal and proper manner.

(b) The interests of the owners and creditors of the creditor and the interests of the public generally will not be jeopardized by the proposed change in control.

(5) The director may determine, in the director's discretion, that subsection (2) does not apply to a transaction if the director determines that the direct or beneficial ownership of the creditor will not change as a result of the transaction.

(6) The president or other chief executive officer of a creditor shall report to the director any transfer or sale of securities of the creditor that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the creditor. The report required by this section must be made not later than ten (10) days after the transfer of the securities on the books of the creditor.

(7) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a creditor licensed under this article to apply for a new license under section 503 of this chapter, instead of acquiring control of the licensee under this section.

SECTION 20. IC 24-5-23.5-3.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3.7. As used in this chapter, "land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

SECTION 21. IC 24-5-23.5-4, AS AMENDED BY P.L.35-2010, SECTION 88, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) As used in this chapter, "mortgage loan" means a loan in which a mortgage ~~deed of trust~~, (or ~~land contract~~ **another equivalent consensual security interest) 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.

**C
O
P
Y**

HEA 1528+



(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) 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~~ **another equivalent consensual security interest**) 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~~ **another equivalent consensual security interest**) 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~~ **another equivalent consensual security interest**) 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.

(c) The term does not include a land contract.

SECTION 22. IC 24-5-23.6-7, AS ADDED BY P.L.115-2010, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) As used in this chapter, "mortgage" means a sale or loan, or the refinancing or consolidation of a sale or loan, in which a first mortgage deed of ~~trust~~; (or ~~a land contract~~ **another equivalent consensual security interest**) that constitutes a first lien, is created or retained against land that is located in Indiana and upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(b) The term includes any of the following that meets the conditions set forth in subsection (a):

- (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) subject to IC 24-4.4.

(c) The term does not include a land contract (as defined in IC 24-4.4-1-301(36)).

C
O
P
Y



SECTION 23. IC 24-7-1-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 7. This article does not apply to the rental purchase of a dwelling (as defined in IC 24-4.4-1-301(11)), regardless of whether the dwelling is assessed as real or personal property for property tax purposes.**

SECTION 24. IC 24-7-7-1, AS AMENDED BY P.L.35-2010, SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1. (a)** The department shall enforce this article. To carry out this responsibility, the department may do the following:

- (1) Receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the department's own initiative.
- (2) Issue and enforce administrative orders under IC 4-21.5.
- (3) Counsel persons and groups on their rights and duties under this article.
- (4) Establish programs for the education of consumers with respect to rental purchase agreement practices and problems.
- (5) Make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public.
- (6) Adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to carry out this article.
- (7) Maintain more than one (1) office within Indiana.
- (8) Bring a civil action to restrain a person from violating this article and for other appropriate relief.
- (9) ~~Impose a civil penalty under IC 4-21.5 of not more than ten thousand dollars (\$10,000) for a violation of this article or a rule adopted under this article.~~

(b) If the department determines, after notice and an opportunity 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 25. IC 24-9-2-9, AS AMENDED BY P.L.141-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. (a)** "Home loan" means a loan, other than an open end credit plan, a reverse mortgage transaction, or a loan described in IC 24-9-1-1, that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:

- (1) designed primarily for occupancy of one (1) to four (4) families; and

C
o
p
y



(2) that is or will be occupied by a borrower as the borrower's principal dwelling.

(b) The term does not include a land contract.

SECTION 26. IC 24-9-2-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.5. "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.**

SECTION 27. IC 24-9-3-6, AS AMENDED BY P.L.52-2009, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide, **in writing**, a payoff balance not later than ~~ten (10)~~ **calendar seven (7) business days (excluding legal public holidays, Saturdays, and Sundays)** after the request is received by the creditor. **A payoff statement provided by a creditor under this subsection must include the date the statement was prepared and the payoff amount as of that date, including an itemization of each fee, charge, or other sum included within the payoff amount.** For purposes of this subsection, "fee" does not include actual charges incurred by a creditor for express or priority delivery of home loan documents to the borrower if such delivery is requested by the borrower.

(b) This subsection applies to a home loan, or the refinancing or consolidation of a home loan, that:

- (1) is closed after June 30, 2009; and
- (2) has an interest rate that is subject to change at one (1) or more times during the term of the home loan.

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

(c) This subsection applies to a home loan 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)~~ **five (5) business days (excluding legal public holidays, Saturdays, and Sundays)** 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

**C
O
P
Y**



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 (**excluding legal public holidays, Saturdays, and Sundays**) 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. **The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed.** As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent 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 28. IC 24-9-3-7, AS AMENDED BY P.L.114-2010, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) As used in this section, "mortgage transaction" includes the following:

- (1) A home loan subject to this article.
- (2) To the extent allowed under federal law, a loan described in IC 24-9-1-1 that is secured by a mortgage (or ~~deed of trust~~ **another equivalent consensual security interest**) on real estate in Indiana on which there is located or will be located a structure or structures:
 - (A) designed primarily for occupancy of one (1) to four (4) families; and
 - (B) that is or will be occupied by a borrower as the borrower's principal dwelling.
- (3) A first lien mortgage transaction (as defined in 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~~ **another equivalent consensual security interest**) that constitutes a lien is created or retained against land:
 - (A) that is located in Indiana; and
 - (B) upon which there is **constructed or intended to be constructed** a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

C
O
P
Y



(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage ~~deed of trust~~; (or ~~land contract~~ **another equivalent consensual security interest**) that constitutes a lien is created or retained against land:

(A) that is located in Indiana; and

(B) upon which there is **constructed or intended to be constructed** a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(6) A loan in which a mortgage, ~~deed of trust~~; (or ~~land contract~~ **another equivalent consensual security interest**) that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is **constructed or intended to be constructed** 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 **constructed or intended to be constructed** a dwelling that is purchased by or through the borrower for investment or other business purposes.

(7) A reverse mortgage transaction that is secured by real estate in Indiana on which there is located a structure that is occupied by a borrower as the borrower's principal dwelling.

The term does not include a land contract.

(b) As used in this section, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate:

(1) that is located in Indiana;

(2) upon which there is **constructed or intended to be constructed** a dwelling; and

(3) that is classified as residential for property tax purposes.

(c) A person may not do any of the following:

(1) Divide a home loan transaction into separate parts with the intent of evading a provision of this article.

(2) Structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the home loan would be a high cost home loan if the home loan had been structured as a closed-end loan.

(3) Engage in a deceptive act in connection with a mortgage transaction or a real estate transaction.

(4) Engage in, or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by

C
O
P
Y



law.

(5) With respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has:

- (i) certain terms or conditions; or
- (ii) the sponsorship or approval of a particular person or entity;

that it does not have and that the person knows or reasonably should know it does not have; or

(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have.

(6) Maintain or offer to maintain an account for the receipt of funds for the payment of real estate taxes and insurance unless the person is any of the following:

(A) Any of the following that is chartered under the laws of a state or the United States:

- (i) A bank.
- (ii) A savings and loan association.
- (iii) A credit union.
- (iv) A savings bank.

(B) The creditor in a mortgage transaction.

(C) A mortgage servicer acting on behalf of the creditor in a mortgage transaction.

(D) A closing agent (as defined in IC 27-7-3.7-1).

(7) Fail to provide the notice required under subsection (d), within the time specified in subsection (d), if the person is a seller in a real estate transaction described in subsection (d).

(d) This subsection applies to a real estate transaction that involves a land contract between the seller and the buyer in the transaction. If the real estate that is the subject of the transaction is subject to any encumbrance, including any tax lien, foreclosure action, legal judgment, or other encumbrance affecting the title to the real estate, the seller must provide written notice by certified mail, return receipt requested, of the encumbrance to the buyer:

(1) not later than the time the land contract is executed, if the encumbrance is created before or at the time the land contract is executed; or

(2) not later than ten (10) business days after the encumbrance is created, if the encumbrance is created after the land contract is

C
O
P
Y



executed.

SECTION 29. IC 27-1-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The following definitions apply to this section:

(1) "Acceptable collateral" means, as to securities lending transactions:

- (A) cash;
- (B) cash equivalents;
- (C) letters of credit; and
- (D) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) "Acceptable collateral" means, as to lending foreign securities, sovereign debt that is rated:

- (A) A- or higher by Standard & Poor's Corporation;
- (B) A3 or higher by Moody's Investors Service, Inc.;
- (C) A- or higher by Duff and Phelps, Inc.; or
- (D) 1 by the Securities Valuation Office.

(3) "Acceptable collateral" means, as to repurchase transactions:

- (A) cash;
- (B) cash equivalents; and
- (C) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(4) "Acceptable collateral" means, as to reverse repurchase transactions:

- (A) cash; and
- (B) cash equivalents.

(5) "Admitted assets" means assets permitted to be reported as admitted assets on the statutory financial statement of the life insurance company most recently required to be filed with the commissioner.

(6) "Business entity" means:

- (A) a sole proprietorship;
- (B) a corporation;
- (C) a limited liability company;
- (D) an association;
- (E) a partnership;

C
O
P
Y



- (F) a joint stock company;
 - (G) a joint venture;
 - (H) a mutual fund;
 - (I) a trust;
 - (J) a joint tenancy; or
 - (K) other, similar form of business organization;
- whether organized for-profit or not-for-profit.
- (7) "Cash" means any of the following:
- (A) United States denominated paper currency and coins.
 - (B) Negotiable money orders and checks.
 - (C) Funds held in any time or demand deposit in any depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
- (8) "Cash equivalent" means any of the following:
- (A) A certificate of deposit issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
 - (B) A banker's acceptance issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
 - (C) A government money market mutual fund.
 - (D) A class one money market mutual fund.
- (9) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment pursuant to the "Purposes and Procedures of the Securities Valuation Office" or any successor publication either using the bond class one reserve factor or because it is exempt from asset valuation reserve requirements.
- (10) "Dollar roll transaction" means two (2) simultaneous transactions that have settlement dates not more than ninety-six (96) days apart and that meet the following description:
- (A) In one (1) transaction, a life insurance company sells to a business entity one (1) or both of the following:
 - (i) Asset-backed securities that are issued, assumed, or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation or the successor of an entity referred to in this item.
 - (ii) Other asset-backed securities referred to in Section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r-1), as amended.
 - (B) In the other transaction, the life insurance company is

C
O
P
Y



obligated to purchase from the same business entity securities that are substantially similar to the securities sold under clause (A).

(11) "Domestic jurisdiction" means:

- (A) the United States;
- (B) any state, territory, or possession of the United States;
- (C) the District of Columbia;
- (D) Canada; or
- (E) any province of Canada.

(12) "Earnings available for fixed charges" means income, after deducting:

- (A) operating and maintenance expenses other than expenses that are fixed charges;
- (B) taxes other than federal and state income taxes;
- (C) depreciation; and
- (D) depletion;

but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of a business entity.

(13) "Fixed charges" includes:

- (A) interest on funded and unfunded debt;
- (B) amortization of debt discount; and
- (C) rentals for leased property.

(14) "Foreign currency" means a currency of a foreign jurisdiction.

(15) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.

(16) "Government money market mutual fund" means a money market mutual fund that at all times:

- (A) invests only in:
 - (i) obligations that are issued, guaranteed, or insured by the United States; or
 - (ii) collateralized repurchase agreements composed of obligations that are issued, guaranteed, or insured by the United States; and
- (B) qualifies for investment without a reserve pursuant to the "Purposes and Procedures of the Securities Valuation Office" or any successor publication.

(17) "Guaranteed or insured," when used in reference to an obligation acquired under this section, means that the guarantor or insurer has agreed to:

- (A) perform or insure the obligation of the obligor or purchase

C
O
P
Y



the obligation; or

(B) be unconditionally obligated, until the obligation is repaid, to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.

(18) "Investment company" means:

(A) an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended; or

(B) a person described in Section 3(c) of the Investment Company Act of 1940.

(19) "Investment company series" means an investment portfolio of an investment company that is organized as a series company to which assets of the investment company have been specifically allocated.

(20) "Letter of credit" means a clean, irrevocable, and unconditional letter of credit that is:

(A) issued or confirmed by; and

(B) payable and presentable at;

a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the "Purposes and Procedures of the Securities Valuation Office" or any successor publication. To constitute acceptable collateral for the purposes of paragraph 29 of subsection (b), a letter of credit must have an expiration date beyond the term of the subject transaction.

(21) "Market value" means the following:

(A) As to cash, the amount of the cash.

(B) As to cash equivalents, the amount of the cash equivalents.

(C) As to letters of credit, the amount of the letters of credit.

(D) As to a security as of any date:

(i) the price for the security on that date obtained from a generally recognized source, or the most recent quotation from such a source; or

(ii) if no generally recognized source exists, the price for the security as determined in good faith by the parties to a transaction;

plus accrued but unpaid income on the security to the extent not included in the price as of that date.

(22) "Money market mutual fund" means a mutual fund that meets the conditions of 17 CFR 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(23) "Multilateral development bank" means an international

C
O
P
Y

HEA 1528+



development organization of which the United States is a member.

(24) "Mutual fund" means:

(A) an investment company; or

(B) in the case of an investment company that is organized as a series company, an investment company series;

that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(25) "Obligation" means any of the following:

(A) A bond.

(B) A note.

(C) A debenture.

(D) Any other form of evidence of debt.

(26) "Person" means:

(A) an individual;

(B) a business entity;

(C) a multilateral development bank; or

(D) a government or quasi-governmental body, such as a political subdivision or a government sponsored enterprise.

(27) "Repurchase transaction" means a transaction in which a life insurance company purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the life insurance company at a specified price, either within a specified period of time or upon demand.

(28) "Reverse repurchase transaction" means a transaction in which a life insurance company sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

(29) "Securities lending transaction" means a transaction in which securities are loaned by a life insurance company to a business entity that is obligated to return the loaned securities or equivalent securities to the life insurance company, either within a specified period of time or upon demand.

(30) "Securities Valuation Office" refers to:

(A) the Securities Valuation Office of the National Association of Insurance Commissioners; or

(B) any successor of the office referred to in Clause (A) established by the National Association of Insurance Commissioners.

C
O
P
Y



(31) "Series company" means an investment company that is organized as a series company (as defined in Rule 18f-2(a) adopted under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended).

(32) "Supported", when used in reference to an obligation, by whomever issued or made, means that:

~~(a)~~ **(A)** repayment of the obligation by:

- (i) a domestic jurisdiction or by an administration, agency, authority, or instrumentality of a domestic jurisdiction; or
- (ii) a business entity;

as the case may be, is secured by real or personal property of value at least equal to the principal amount of the obligation by means of mortgage, assignment of vendor's interest in one (1) or more conditional sales contracts, other title retention device, or by means of other security interest in such property for the benefit of the holder of the obligation; and

~~(b)~~ **(B)** the:

- (i) domestic jurisdiction or administration, agency, authority, or instrumentality of the domestic jurisdiction; or
- (ii) business entity;

as the case may be, has entered into a firm agreement to rent or use the property pursuant to which it is obligated to pay money as rental or for the use of such property in amounts and at times which shall be sufficient, after provision for taxes upon and other expenses of use of the property, to repay in full the obligation with interest and when such agreement and the money obligated to be paid thereunder are assigned, pledged, or secured for the benefit of the holder of the obligation. However, where the security for the repayment of the obligation consists of a first mortgage lien or deed of trust on a fee interest in real property, the obligation may provide for the amortization, during the initial, fixed period of the lease or contract, of less than one hundred percent (100%) of the obligation if there is pledged or assigned, as additional security for the obligation, sufficient rentals payable under the lease, or of contract payments, to secure the amortized obligation payments required during the initial, fixed period of the lease or contract, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower, and if there is to be left unamortized at the end of such period an amount not greater than the original appraised value of the land only, exclusive of all improvements, as

**C
O
P
Y**



prescribed by law.

(b) Investments of domestic life insurance companies at the time they are made shall conform to the following categories, conditions, limitations, and standards:

1. Obligations of a domestic jurisdiction or of any administration, agency, authority, or instrumentality of a domestic jurisdiction.

2. Obligations guaranteed, supported, or insured as to principal and interest by a domestic jurisdiction or by an administration, agency, authority, or instrumentality of a domestic jurisdiction.

3. Obligations issued under or pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14) as in effect on December 31, 1990, or the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) as in effect on December 31, 1990, interest bearing obligations of the FSLIC Resolution Fund or shares of any institution whose deposits are insured by the ~~Savings Association Insurance Fund of the~~ Federal Deposit Insurance Corporation to the extent that such shares are insured, obligations issued or guaranteed by a multilateral development bank, and obligations issued or guaranteed by the African Development Bank.

4. Obligations issued, guaranteed, or insured as to principal and interest by a city, county, drainage district, road district, school district, tax district, town, township, village, or other civil administration, agency, authority, instrumentality, or subdivision of a domestic jurisdiction, providing such obligations are authorized by law and are:

(a) direct and general obligations of the issuing, guaranteeing or insuring governmental unit, administration, agency, authority, district, subdivision, or instrumentality;

(b) payable from designated revenues pledged to the payment of the principal and interest thereof; or

(c) improvement bonds or other obligations constituting a first lien, except for tax liens, against all of the real estate within the improvement district or on that part of such real estate not discharged from such lien through payment of the assessment. The area to which such improvement bonds or other obligations relate shall be situated within the limits of a town or city and at least fifty percent (50%) of the properties within such area shall be improved with business buildings or residences.

5. Loans evidenced by obligations secured by first mortgage liens on otherwise unencumbered real estate or otherwise unencumbered leaseholds having at least fifty (50) years of unexpired term, such real estate, or leaseholds to be located in a domestic jurisdiction. Such loans shall not exceed eighty percent (80%) of the fair value of the security

C
O
P
Y

HEA 1528+



determined in a manner satisfactory to the department, except that the percentage stated may be exceeded if and to the extent such excess is guaranteed or insured by:

- (a) a domestic jurisdiction or by an administration, agency, authority, or instrumentality of any domestic jurisdiction; or
- (b) a private mortgage insurance corporation approved by the department.

If improvements constitute a part of the value of the real estate or leaseholds, such improvements shall be insured against fire for the benefit of the mortgagee in an amount not less than the difference between the value of the land and the unpaid balance of the loan.

For the purpose of this section, real estate or a leasehold shall not be deemed to be encumbered by reason of the existence in relation thereto of:

- (1) liens inferior to the lien securing the loan made by the life insurance company;
- (2) taxes or assessment liens not delinquent;
- (3) instruments creating or reserving mineral, oil, water or timber rights, rights-of-way, common or joint driveways, sewers, walls, or utility connections;
- (4) building restrictions or other restrictive covenants; or
- (5) an unassigned lease reserving rents or profits to the owner.

A loan that is authorized by this paragraph remains qualified under this paragraph notwithstanding any refinancing, modification, or extension of the loan. Investments authorized by this paragraph shall not in the aggregate exceed forty-five percent (45%) of the life insurance company's admitted assets.

6. Loans evidenced by obligations guaranteed or insured, but only to the extent guaranteed or insured, by a domestic jurisdiction or by any agency, administration, authority, or instrumentality of any domestic jurisdiction, and secured by second or subsequent mortgages or deeds of trust on real estate or leaseholds, provided the terms of the leasehold mortgages or deeds of trust shall not exceed four-fifths (4/5) of the unexpired lease term, including enforceable renewable options remaining at the time of the loan.

7. Real estate contracts involving otherwise unencumbered real estate situated in a domestic jurisdiction, to be secured by the title to such real estate, which shall be transferred to the life insurance company or to a trustee or nominee of its choosing. For statement and deposit purposes, the value of a contract acquired pursuant to this paragraph shall be whichever of the following amounts is the least:

- (a) eighty percent (80%) of the contract price of the real estate;

C
O
P
Y

HEA 1528+



- (b) eighty percent (80%) of the fair value of the real estate at the time the contract is purchased, such value to be determined in a manner satisfactory to the department; or
- (c) the amount due under the contract.

For the purpose of this paragraph, real estate shall not be deemed encumbered by reason of the existence in relation thereto of: (1) taxes or assessment liens not delinquent; (2) instruments creating or reserving mineral, oil, water or timber rights, rights-of-way, common or joint driveways, sewers, walls or utility connections; (3) building restrictions or other restrictive covenants; or (4) an unassigned lease reserving rents or profits to the owner. Fire insurance upon improvements constituting a part of the real estate described in the contract shall be maintained in an amount at least equal to the unpaid balance due under the contract or the fair value of improvements, whichever is the lesser.

8. Improved or unimproved real property, whether encumbered or unencumbered, or any interest therein, held directly or evidenced by joint venture interests, general or limited partnership interests, trust certificates, or any other instruments, and acquired by the life insurance company as an investment, which real property, if unimproved, is developed within five (5) years. Real property acquired for investment under this paragraph, whether leased or intended to be developed for commercial or residential purposes or otherwise lawfully held, is subject to the following conditions and limitations:

- (a) The real estate shall be located in a domestic jurisdiction.
- (b) The admitted assets of the life insurance company must exceed twenty-five million dollars (\$25,000,000).
- (c) The life insurance company shall have the right to expend from time to time whatever amount or amounts may be necessary to conform the real estate to the needs and purposes of the lessee and the amount so expended shall be added to and become a part of the investment in such real estate.
- (d) The value for statement and deposit purposes of an investment under this paragraph shall be reduced annually by amortization of the costs of improvement and development, less land costs, over the expected life of the property, which value and amortization shall for statement and deposit purposes be determined in a manner satisfactory to the commissioner. In determining such value with respect to the calendar years in which an investment begins or ends with respect to a point in time other than the beginning or end of a calendar year, the amortization provided above shall be made on a proportional basis.

C
O
P
Y



(e) Fire insurance shall be maintained in an amount at least equal to the insurable value of the improvements or the difference between the value of the land and the value at which such real estate is carried for statement and deposit purposes, whichever amount is smaller.

(f) Real estate acquired in any of the manners described and sanctioned under section 3 of this chapter, or otherwise lawfully held, except paragraph 5 of that section which specifically relates to the acquisition of real estate under this paragraph, shall not be affected in any respect by this paragraph unless such real estate at or subsequent to its acquisition fulfills the conditions and limitations of this paragraph, and is declared by the life insurance company in a writing filed with the department to be an investment under this paragraph. The value of real estate acquired under section 3 of this chapter, or otherwise lawfully held, and invested under this paragraph shall be initially that at which it was carried for statement and deposit purposes under that section.

(g) Neither the cost of each parcel of improved real property nor the aggregate cost of all unimproved real property acquired under the authority of this paragraph may exceed two percent (2%) of the life insurance company's admitted assets. For purposes of this paragraph, "unimproved real property" means land containing no structures intended for commercial, industrial, or residential occupancy, and "improved real property" consists of all land containing any such structure. When applying the limitations of subparagraph (d) of this paragraph, unimproved real property becomes improved real property as soon as construction of any commercial, industrial, or residential structure is so completed as to be capable of producing income. In the event the real property is mortgaged with recourse to the life insurance company or the life insurance company commences a plan of construction upon real property at its own expense or guarantees payment of borrowed funds to be used for such construction, the total project cost of the real property will be used in applying the two percent (2%) test. Further, no more than ten percent (10%) of the life insurance company's admitted assets may be invested in all property, measured by the property value for statement and deposit purposes as defined in this paragraph, held under this paragraph at the same time.

9. Deposits of cash in a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or certificates of deposit issued by a depository institution, the deposits of

C
O
P
Y

HEA 1528+



which are insured by the Federal Deposit Insurance Corporation.

10. Bank and bankers' acceptances and other bills of exchange of kinds and maturities eligible for purchase or rediscount by federal reserve banks.

11. Obligations that are issued, guaranteed, assumed, or supported by a business entity organized under the laws of a domestic jurisdiction and that are rated:

- (a) BBB- or higher by Standard & Poor's Corporation (or A-2 or higher in the case of commercial paper);
- (b) Baa 3 or higher by Moody's Investors Service, Inc. (or P-2 or higher in the case of commercial paper);
- (c) BBB- or higher by Duff and Phelps, Inc. (or D-2 or higher in the case of commercial paper); or
- (d) 1 or 2 by the Securities Valuation Office.

Investments may also be made under this paragraph in obligations that have not received a rating if the earnings available for fixed charges of the business entity for the period of its five (5) fiscal years next preceding the date of purchase shall have averaged per year not less than one and one-half (1 1/2) times its average annual fixed charges applicable to such period and if during either of the last two (2) years of such period such earnings available for fixed charges shall have been not less than one and one-half (1 1/2) times its fixed charges for such year. However, if the business entity is a finance company or other lending institution at least eighty percent (80%) of the assets of which are cash and receivables representing loans or discounts made or purchased by it, the multiple shall be one and one-quarter (1 1/4) instead of one and one-half (1 1/2).

11.(A) Obligations issued, guaranteed, or assumed by a business entity organized under the laws of a domestic jurisdiction, which obligations have not received a rating or, if rated, have not received a rating that would qualify the obligations for investment under paragraph 11 of this section. Investments authorized by this paragraph may not exceed ten percent (10%) of the life insurance company's admitted assets.

12. Preferred stock of, or common or preferred stock guaranteed as to dividends by, any corporation organized under the laws of a domestic jurisdiction, which over the period of the seven (7) fiscal years immediately preceding the date of purchase earned an average amount per annum at least equal to five percent (5%) of the par value of its common and preferred stock (or, in the case of stocks having no par value, of its issued or stated value) outstanding at date of purchase, or which over such period earned an average amount per annum at least

C
O
P
Y

HEA 1528+



equal to two (2) times the total of its annual interest charges, preferred dividends and dividends guaranteed by it, determined with reference to the date of purchase. No investment shall be made under this paragraph in a stock upon which any dividend is in arrears or has been in arrears for ninety (90) days within the immediately preceding five (5) year period.

13. Common stock of any solvent corporation organized under the laws of a domestic jurisdiction which over the seven (7) fiscal years immediately preceding purchase earned an average amount per annum at least equal to six percent (6%) of the par value of its capital stock (or, in the case of stock having no par value, of the issued or stated value of such stock) outstanding at date of purchase, but the conditions and limitations of this paragraph shall not apply to the special area of investment to which paragraph 23 of this section pertains.

13.(A) Stock or shares of any mutual fund that:

(a) has been in existence for a period of at least five (5) years immediately preceding the date of purchase, has assets of not less than twenty-five million dollars (\$25,000,000) at the date of purchase, and invests substantially all of its assets in investments permitted under this section; or

(b) is a class one money market mutual fund or a class one bond mutual fund.

Investments authorized by this paragraph 13(A) in mutual funds having the same or affiliated investment advisers shall not at any one (1) time exceed in the aggregate ten percent (10%) of the life insurance company's admitted assets. The limitations contained in paragraph 22 of this subsection apply to investments in the types of mutual funds described in subparagraph (a). For the purposes of this paragraph, "class one bond mutual fund" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the "Purposes and Procedures of the Securities Valuation Office" or any successor publication.

The aggregate amount of investments under this paragraph may be limited by the commissioner if the commissioner finds that investments under this paragraph may render the operation of the life insurance company hazardous to the company's policyholders or creditors or to the general public.

14. Loans upon the pledge of any of the investments described in this section other than real estate and those qualifying solely under paragraph 20 of this subsection, but the amount of such a loan shall not exceed seventy-five percent (75%) of the value of the investment pledged.

HEA 1528+



**C
O
P
Y**

15. Real estate acquired or otherwise lawfully held under the provisions of IC 27-1, except under paragraph 7 or 8 of this subsection, which real estate as an investment shall also include the value of improvements or betterments made thereon subsequent to its acquisition. The value of such real estate for deposit and statement purposes is to be determined in a manner satisfactory to the department.

15.(A) Tangible personal property, equipment trust obligations, or other instruments evidencing an ownership interest or other interest in tangible personal property when the life insurance company purchasing such property has admitted assets in excess of twenty-five million dollars (\$25,000,000), and where there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use of such personal property from a corporation whose obligations would be eligible for investment under the provisions of paragraph 11 of this subsection, provided that the aggregate of such payments together with the estimated salvage value of such property at the end of its minimum useful life, to be determined in a manner acceptable to the insurance commissioner, and the estimated tax benefits to the insurer resulting from ownership of such property, is adequate to return the cost of the investment in such property, and provided further, that each net investment in tangible personal property for which any single private corporation is obligated to pay rental, purchase, or other obligatory payments thereon does not exceed one-half of one percent (1/2%) of the life insurance company's admitted assets, and the aggregate net investments made under the provisions of this paragraph do not exceed five percent (5%) of the life insurance company's admitted assets.

16. Loans to policyholders of the life insurance company in amounts not exceeding in any case the reserve value of the policy at the time the loan is made.

17. A life insurance company doing business in a foreign jurisdiction may, if permitted or required by the laws of such jurisdiction, invest funds equal to its obligations in such jurisdiction in investments legal for life insurance companies domiciled in such jurisdiction or doing business therein as alien companies.

17.(A) Investments in (i) obligations issued, guaranteed, assumed, or supported by a foreign jurisdiction or by a business entity organized under the laws of a foreign jurisdiction and (ii) preferred stock and common stock issued by any such business entity, if the obligations of such foreign jurisdiction or business entity, as appropriate, are rated:

(a) BBB- or higher by Standard & Poor's Corporation (or A-2 or

C
O
P
Y

HEA 1528+



- higher in the case of commercial paper);
- (b) Baa 3 or higher by Moody's Investors Service, Inc. (or P-2 or higher in the case of commercial paper);
- (c) BBB- or higher by Duff and Phelps, Inc. (or D-2 or higher in the case of commercial paper); or
- (d) 1 or 2 by the Securities Valuation Office.

If the obligations issued by a business entity organized under the laws of a foreign jurisdiction have not received a rating, investments may nevertheless be made under this paragraph in such obligations and in the preferred and common stock of the business entity if the earnings available for fixed charges of the business entity for a period of five (5) fiscal years preceding the date of purchase have averaged at least three (3) times its average fixed charges applicable to such period, and if during either of the last two (2) years of such period, the earnings available for fixed charges were at least three (3) times its fixed charges for such year. Investments authorized by this paragraph in a single foreign jurisdiction shall not exceed ten percent (10%) of the life insurance company's admitted assets. Subject to section 2.2(g) of this chapter, investments authorized by this paragraph denominated in foreign currencies shall not in the aggregate exceed ten percent (10%) of a life insurance company's admitted assets, and investments in any one (1) foreign currency shall not exceed five percent (5%) of the life insurance company's admitted assets. Investments authorized by this paragraph and paragraph 17(B) shall not in the aggregate exceed twenty percent (20%) of the life insurance company's admitted assets. This paragraph in no way limits or restricts investments which are otherwise specifically eligible for deposit under this section.

17.(B) Investments in:

- (a) obligations issued, guaranteed, or assumed by a foreign jurisdiction or by a business entity organized under the laws of a foreign jurisdiction; and
- (b) preferred stock and common stock issued by a business entity organized under the laws of a foreign jurisdiction;

which investments are not eligible for investment under paragraph 17.(A).

Investments authorized by this paragraph 17(B) shall not in the aggregate exceed five percent (5%) of the life insurance company's admitted assets. Subject to section 2.2(g) of this chapter, if investments authorized by this paragraph 17(B) are denominated in a foreign currency, the investments shall not, as to such currency, exceed two percent (2%) of the life insurance company's admitted assets. Investments authorized by this paragraph 17(B) in any one (1) foreign

C
O
P
Y



jurisdiction shall not exceed two percent (2%) of the life insurance company's admitted assets.

Investments authorized by paragraph 17(A) of this subsection and this paragraph 17(B) shall not in the aggregate exceed twenty percent (20%) of the life insurance company's admitted assets.

18. To protect itself against loss, a company may in good faith receive in payment of or as security for debts due or to become due, investments or property which do not conform to the categories, conditions, limitations, and standards set out above.

19. A life insurance company may purchase for its own benefit any of its outstanding annuity or insurance contracts or other obligations and the claims of holders thereof.

20. A life insurance company may make investments although not conforming to the categories, conditions, limitations, and standards contained in paragraphs 1 through 11, 12 through 19, and 29 through 31 of this subsection, but limited in aggregate amount to the lesser of:

- (a) ten percent (10%) of the company's admitted assets; or
- (b) the aggregate of the company's capital, surplus, and contingency reserves reported on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

This paragraph 20 does not apply to investments authorized by paragraph 11.(A) of this subsection.

20.(A) Investments under paragraphs 1 through 20 and paragraphs 29 through 31 of this subsection are subject to the general conditions, limitations, and standards contained in paragraphs 21 through 28 of this subsection.

21. Investments in obligations (other than real estate mortgage indebtedness) and capital stock of, and in real estate and tangible personal property leased to, a single corporation, shall not exceed two percent (2%) of the life insurance company's admitted assets, taking into account the provisions of section 2.2(h) of this chapter. The conditions and limitations of this paragraph shall not apply to investments under paragraph 13(A) of this subsection or the special area of investment to which paragraph 23 of this subsection pertains.

22. Investments in:

- (a) preferred stock; and
- (b) common stock;

shall not, in the aggregate, exceed twenty percent (20%) of the life insurance company's admitted assets, exclusive of assets held in segregated accounts of the nature defined in class 1(c) of IC 27-1-5-1. These limitations shall not apply to investments for the special

C
O
P
Y

HEA 1528+



purposes described in paragraph 23 of this subsection nor to investments in connection with segregated accounts provided for in class 1(c) of IC 27-1-5-1.

23. Investments in subsidiary companies must be made in accordance with IC 27-1-23-2.6.

24. No investment, other than commercial bank deposits and loans on life insurance policies, shall be made unless authorized by the life insurance company's board of directors or a committee designated by the board of directors and charged with the duty of supervising loans or investments.

25. No life insurance company shall subscribe to or participate in any syndicate or similar underwriting of the purchase or sale of securities or property or enter into any transaction for such purchase or sale on account of said company, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property, but the disposition of its assets shall at all times be within its control. Nothing contained in this paragraph shall be construed to invalidate or prohibit an agreement by two (2) or more companies to join and share in the purchase of investments for bona fide investment purposes.

26. No life insurance company may invest in the stocks or obligations, except investments under paragraphs 9 and 10 of this subsection, of any corporation in which an officer of such life insurance company is either an officer or director. However, this limitation shall not apply with respect to such investments in:

- (a) a corporation which is a subsidiary or affiliate of such life insurance company; or
- (b) a trade association, provided such investment meets the requirements of paragraph 5 of this subsection.

27. Except for the purpose of mutualization provided for in section 23 of this chapter, or for the purpose of retirement of outstanding shares of capital stock pursuant to amendment of its articles of incorporation, or in connection with a plan approved by the commissioner for purchase of such shares by the life insurance company's officers, employees, or agents, no life insurance company shall invest in its own stock.

28. In applying the conditions, limitations, and standards prescribed in paragraphs 11, 12, and 13 of this subsection to the stocks or obligations of a corporation which in the seven (7) year period preceding purchase of such stocks or obligations acquired its property or a substantial part thereof through consolidation, merger, or purchase, the earnings of the several predecessors or constituent corporations

C
O
P
Y

HEA 1528+



shall be consolidated.

29. A. Before a life insurance company may engage in securities lending transactions, repurchase transactions, reverse repurchase transactions, or dollar roll transactions, the life insurance company's board of directors must adopt a written plan that includes guidelines and objectives to be followed, including the following:

- (1) A description of how cash received will be invested or used for general corporate purposes of the company.
- (2) Operational procedures for managing interest rate risk, counterparty default risk, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction.
- (3) A statement of the extent to which the company may engage in securities lending transactions, repurchase transactions, reverse repurchase transactions, and dollar roll transactions.

B. A life insurance company must enter into a written agreement for all transactions authorized by this paragraph, other than dollar roll transactions. The written agreement:

- (1) must require the termination of each transaction not more than one (1) year after its inception or upon the earlier demand of the company; and
- (2) must be with the counterparty business entity, except that, for securities lending transactions, the agreement may be with an agent acting on behalf of the life insurance company if:

(A) the agent is:

- (i) a business entity, the obligations of which are rated BBB- or higher by Standard & Poor's Corporation (or A-2 or higher in the case of commercial paper), Baa3 or higher by Moody's Investors Service, Inc. (or P-2 or higher in the case of commercial paper), BBB- or higher by Duff and Phelps, Inc. (or D-2 or higher in the case of commercial paper), or 1 or 2 by the Securities Valuation Office;
- (ii) a business entity that is a primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York; or
- (iii) any other business entity approved by the commissioner; and

(B) the agreement requires the agent to enter into with each counterparty separate agreements that are consistent with the requirements of this paragraph.

C. Cash received in a transaction under this paragraph shall be:

- (1) invested:
 - (A) in accordance with this section 2; and

C
O
P
Y



(B) in a manner that recognizes the liquidity needs of the transaction; or

(2) used by the life insurance company for its general corporate purposes.

D. For as long as a transaction under this paragraph remains outstanding, the life insurance company or its agent or custodian shall maintain, as to acceptable collateral received in the transaction, either physically or through book entry systems of the Federal Reserve, the Depository Trust Company, the Participants Trust Company, or another securities depository approved by the commissioner:

- (1) possession of the acceptable collateral;
- (2) a perfected security interest in the acceptable collateral; or
- (3) in the case of a jurisdiction outside the United States:

(A) title to; or

(B) rights of a secured creditor to;

the acceptable collateral.

E. The limitations set forth in paragraphs 17 and 21 of this subsection do not apply to transactions under this paragraph 29. For purposes of calculations made to determine compliance with this paragraph, no effect may be given to the future obligation of the life insurance company to:

- (1) resell securities, in the case of a repurchase transaction; or
- (2) repurchase securities, in the case of a reverse repurchase transaction.

F. A life insurance company shall not enter into a transaction under this paragraph if, as a result of the transaction, and after giving effect to the transaction:

- (1) the aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity under this paragraph would exceed five percent (5%) of the company's admitted assets (but in calculating the amount sold to or purchased from a business entity under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement); or
- (2) the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this paragraph would exceed forty percent (40%) of the admitted assets of the company (provided, however, that this limitation does not apply to a reverse repurchase transaction if the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and is subject to a plan approved by the commissioner).

C
O
P
Y



G. The following collateral requirements apply to all transactions under this paragraph:

(1) In a securities lending transaction, the life insurance company must receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the company in the transaction as of that date. If at any time the market value of the acceptable collateral received from a particular business entity is less than the market value of all securities loaned by the company to that business entity, the business entity shall be obligated to deliver additional acceptable collateral to the company, the market value of which, together with the market value of all acceptable collateral then held in connection with all securities lending transactions with that business entity, equals at least one hundred two percent (102%) of the market value of the loaned securities.

(2) In a reverse repurchase transaction, other than a dollar roll transaction, the life insurance company must receive acceptable collateral having a market value as of the transaction date equal to at least ninety-five percent (95%) of the market value of the securities transferred by the company in the transaction as of that date. If at any time the market value of the acceptable collateral received from a particular business entity is less than ninety-five percent (95%) of the market value of all securities transferred by the company to that business entity, the business entity shall be obligated to deliver additional acceptable collateral to the company, the market value of which, together with the market value of all acceptable collateral then held in connection with all reverse repurchase transactions with that business entity, equals at least ninety-five percent (95%) of the market value of the transferred securities.

(3) In a dollar roll transaction, the life insurance company must receive cash in an amount at least equal to the market value of the securities transferred by the company in the transaction as of the transaction date.

(4) In a repurchase transaction, the life insurance company must receive acceptable collateral having a market value equal to at least one hundred two percent (102%) of the purchase price paid by the company for the securities. If at any time the market value of the acceptable collateral received from a particular business entity is less than one hundred percent (100%) of the purchase price paid by the life insurance company in all repurchase

C
O
P
Y



transactions with that business entity, the business entity shall be obligated to provide additional acceptable collateral to the company, the market value of which, together with the market value of all acceptable collateral then held in connection with all repurchase transactions with that business entity, equals at least one hundred two percent (102%) of the purchase price. Securities acquired by a life insurance company in a repurchase transaction shall not be:

- (A) sold in a reverse repurchase transaction;
- (B) loaned in a securities lending transaction; or
- (C) otherwise pledged.

30. A life insurance company may invest in obligations or interests in trusts or partnerships regardless of the issuer, which are secured by:

- (a) investments authorized by paragraphs 1, 2, 3, 4, or 11 of this subsection; or
- (b) collateral with the characteristics and limitations prescribed for loans under paragraph 5 of this subsection.

For the purposes of this paragraph 30, collateral may be substituted for other collateral if it is in the same amount with the same or greater interest rate and qualifies as collateral under subparagraph (a) or (b) of this paragraph.

31. A life insurance company may invest in obligations or interests in trusts or partnerships, regardless of the issuer, secured by any form of collateral other than that described in subparagraphs (a) and (b) of paragraph 30 of this subsection, which obligations or interests in trusts or partnerships are rated:

- (a) A- or higher by Standard & Poor's Corporation or Duff and Phelps, Inc.;
- (b) A 3 or higher by Moody's Investor Service, Inc.; or
- (c) 1 by the Securities Valuation Office.

Investments authorized by this paragraph may not exceed ten percent (10%) of the life insurance company's admitted assets.

32. A. A life insurance company may invest in short-term pooling arrangements as provided in this paragraph.

B. The following definitions apply throughout this paragraph:

- (1) "Affiliate" means, as to any person, another person that, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with the person.
- (2) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting

C
O
P
Y



securities, by contract (other than a commercial contract for goods or non-management services), or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) "Qualified bank" means a national bank, state bank, or trust company that at all times is not less than adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws or is a member of the Federal Reserve System.

C. A life insurer may participate in investment pools qualified under this paragraph that invest only in:

(1) obligations that are rated BBB- or higher by Standard & Poor's Corporation (or A-2 or higher in the case of commercial paper), Baa 3 or higher by Moody's Investors Service, Inc. (or P-2 or higher in the case of commercial paper), BBB- or higher by Duff and Phelps, Inc. (or D-2 or higher in the case of commercial paper), or 1 or 2 by the Securities Valuation Office, and have:

(A) a remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or

(B) a remaining maturity of three (3) years or less and a floating interest rate that resets not less frequently than quarterly on the basis of a current short-term index (for example, federal funds, prime rate, treasury bills, London InterBank Offered Rate (LIBOR) or commercial paper) and is not subject to a maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(2) government money market mutual funds or class one money market mutual funds; or

(3) securities lending, repurchase, and reverse repurchase and dollar roll transactions that meet the requirements of paragraph 29

C
O
P
Y



of this subsection and any applicable regulations of the department;
 provided that the investment pool shall not acquire investments in any one (1) business entity that exceed ten percent (10%) of the total assets of the investment pool.

D. For an investment pool to be qualified under this paragraph, the investment pool shall not:

- (1) acquire securities issued, assumed, guaranteed, or insured by the life insurance company or an affiliate of the company; or
- (2) borrow or incur any indebtedness for borrowed money, except for securities lending, reverse repurchase, and dollar roll transactions that meet the requirements of paragraph 29 of this subsection.

E. A life insurance company shall not participate in an investment pool qualified under this paragraph if, as a result of and after giving effect to the participation, the aggregate amount of participation then held by the company in all investment pools under this paragraph and section 2.4 of this chapter would exceed thirty-five percent (35%) of its admitted assets.

F. For an investment pool to be qualified under this paragraph:

- (1) the manager of the investment pool must:
 - (A) be organized under the laws of the United States, a state or territory of the United States, or the District of Columbia, and designated as the pool manager in a pooling agreement; and
 - (B) be the life insurance company, an affiliated company, a business entity affiliated with the company, or a qualified bank or a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. 80a-1 et seq.);
- (2) the pool manager or an entity designated by the pool manager of the type set forth in subdivision (1) of this subparagraph F shall compile and maintain detailed accounting records setting forth:
 - (A) the cash receipts and disbursements reflecting each participant's proportionate participation in the investment pool;
 - (B) a complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any) and other appropriate designations); and
 - (C) other records which, on a daily basis, allow third parties to verify each participant's interest in the investment pool; and
- (3) the assets of the investment pool shall be held in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement or trust agreement with a qualified bank, which must:

C
O
P
Y



(A) state and recognize the claims and rights of each participant;

(B) acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its participation in the investment pool; and

(C) contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the qualified bank or any other person.

G. The pooling agreement for an investment pool qualified under this paragraph must be in writing and must include the following provisions:

(1) Insurers, subsidiaries, or affiliates of insurers holding interests in the pool, or any pension or profit sharing plan of such insurers or their subsidiaries or affiliates, shall, at all times, hold one hundred percent (100%) of the interests in the investment pool.

(2) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person.

(3) In proportion to the aggregate amount of each pool participant's interest in the investment pool:

(A) each participant owns an undivided interest in the underlying assets of the investment pool; and

(B) the underlying assets of the investment pool are held solely for the benefit of each participant.

(4) A participant or (in the event of the participant's insolvency, bankruptcy, or receivership) its trustee, receiver, or other successor-in-interest may withdraw all or any portion of its participation from the investment pool under the terms of the pooling agreement.

(5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter. Payments upon withdrawals under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide for such payments to be made to the participants in one

(1) of the following forms, at the discretion of the pool manager:

(A) in cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

(B) in kind, a pro rata share of each underlying asset; or

(C) in a combination of cash and in kind distributions, a pro

C
O
P
Y



rata share in each underlying asset.

(6) The records of the investment pool shall be made available for inspection by the commissioner.

SECTION 30. IC 27-1-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The following definitions apply throughout this section:

(1) "Acceptable collateral" means the following:

(A) As to securities lending transactions and for the purpose of calculating counterparty exposure:

- (i) cash;
- (ii) cash equivalents;
- (iii) letters of credit; and
- (iv) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(B) As to lending foreign securities, sovereign debt rated 1 by the Securities Valuation Office.

(C) As to repurchase transactions:

- (i) cash;
- (ii) cash equivalents; and
- (iii) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(D) As to reverse repurchase transactions:

- (i) cash; and
- (ii) cash equivalents.

(2) "Admitted assets" means assets permitted to be reported as admitted assets on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(3) "Business entity" means any of the following:

- (A) A sole proprietorship.
- (B) A corporation.
- (C) A limited liability company.
- (D) An association.
- (E) A general partnership.
- (F) A limited partnership.
- (G) A limited liability partnership.
- (H) A joint stock company.

C
O
P
Y



- (I) A joint venture.
 - (J) A trust.
 - (K) A joint tenancy.
 - (L) Any other similar form of business organization, whether for profit or nonprofit.
- (4) "Cash" means any of the following:
- (A) United States denominated paper currency and coins.
 - (B) Negotiable money orders and checks.
 - (C) Funds held in any time or demand deposit in any depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
- (5) "Cash equivalent" means any of the following:
- (A) A certificate of deposit issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
 - (B) A banker's acceptance issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
 - (C) A government money market mutual fund.
 - (D) A class one (1) money market mutual fund.
- (6) "Class one (1) money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one (1) reserve factor pursuant to the Purposes and Procedures of the Securities Valuation Office of the National Association of Insurance Commissioners or any successor publication.
- (7) "Government money market mutual fund" means a money market mutual fund that at all times:
- (A) invests only in obligations issued, guaranteed, or insured by the United States or collateralized repurchase agreements composed of these obligations; and
 - (B) qualifies for investment without a reserve pursuant to the Purposes and Procedures of the Securities Valuation Office of the National Association of Insurance Commissioners or any successor publication.
- (8) "Money market mutual fund" means a mutual fund that meets the conditions of 17 CFR 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).
- (9) "Mutual fund" means:
- (A) an investment company; or
 - (B) in the case of an investment company that is organized as a series company, an investment company series;

C
O
P
Y



that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(10) "Obligation" means any of the following:

- (A) A bond.
- (B) A note.
- (C) A debenture.
- (D) Any other form of evidence of debt.

(11) "Qualified business entity" means a business entity that is:

- (A) an issuer of obligations or preferred stock that is rated one (1) or two (2) or is rated the equivalent of one (1) or two (2) by the Securities Valuation Office or by a nationally recognized statistical rating organization recognized by the Securities Valuation Office; or

- (B) a primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.

(12) "Securities Valuation Office" refers to the Securities Valuation Office of the National Association of Insurance Commissioners or any successor of the Office established by the National Association of Insurance Commissioners.

(b) Any company, other than one organized as a life insurance company, organized under the provisions of IC 27-1 or any other law of this state and authorized to make any or all kinds of insurance described in class 2 or class 3 of IC 27-1-5-1 shall invest its capital or guaranty fund as follows and not otherwise:

(1) In cash.

(2) In:

- (A) direct obligations of the United States; or
- (B) obligations secured or guaranteed as to principal and interest by the United States.

(3) In:

- (A) direct obligations; or
- (B) obligations secured by the full faith and credit;

of any state of the United States or the District of Columbia.

(4) In obligations of any county, township, city, town, village, school district, or other municipal district within the United States which are a direct obligation of the county, township, city, town, village, or district issuing the same.

(5) In obligations secured by mortgages or deeds of trust or unencumbered real estate or perpetual leases thereon in the United States not exceeding eighty percent (80%) of the fair value of the security determined in a manner satisfactory to the

C
O
P
Y



department, except that the percentage stated may be exceeded if and to the extent such excess is guaranteed or insured by the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, any province of Canada, or by an administration, agency, authority, or instrumentality of any such governmental units. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire and tornado for the benefit of the mortgagee. For the purposes of this section, real estate may not be deemed to be encumbered by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights-in-walls, nor by reason of building restrictions, or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner. The restrictions contained in this subdivision do not apply to loans or investments made under section 5 of this chapter.

(c) Any company organized under the provisions of this article or any other law of this state and authorized to make any or all of the kinds of insurance described in class 2 or class 3 of IC 27-1-5-1 shall invest its funds over and above its required capital stock or required guaranty fund as follows, and not otherwise:

(1) In cash or cash equivalents. However, not more than ten percent (10%) of admitted assets may be invested in any single government money market mutual fund or class one (1) money market mutual fund.

(2) In direct obligations of the United States or obligations secured or guaranteed as to principal and interest by the United States.

(3) In obligations issued, guaranteed, or insured as to principal and interest by a city, county, drainage district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a state, territory, or possession of the United States, the District of Columbia, Canada, or any province of Canada, providing such obligations are authorized by law and are either:

(A) direct and general obligations of the issuing, guaranteeing, or insuring governmental unit, administration, agency, authority, district, subdivision, or instrumentality;

(B) payable from designated revenues pledged to the payment of the principal and interest of the obligations; or

**C
O
P
Y**



(C) improvement bonds or other obligations constituting a first lien, except for tax liens, against all of the real estate within the improvement district or on that part of such real estate not discharged from such lien through payment of the assessment. The area to which the improvement bonds or other obligations under clause (C) relate must be situated within the limits of a town or city and at least fifty percent (50%) of the properties within that area must be improved with business buildings or residences.

(4) In:

(A) direct obligations; or

(B) obligations secured by the full faith and credit; of any state of the United States, the District of Columbia, or Canada or any province thereof.

(5) In obligations guaranteed, supported, or insured as to principal and interest by the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, any province of Canada, or by an administration, agency, authority, or instrumentality of any of the political units listed in this subdivision. An obligation is "supported" for the purposes of this subdivision when repayment of the obligation is secured by real or personal property of value at least equal to the principal amount of the indebtedness by means of mortgage, assignment of vendor's interest in one (1) or more conditional sales contracts, other title retention device, or by means of other security interest in the property for the benefit of the holder of the obligation, and one (1) of the political units listed in this subdivision, or an administration, agency, authority, or instrumentality listed in this subdivision, has entered into a firm agreement to rent or use the property pursuant to which entity is obligated to pay money as rental or for the use of the property in amounts and at times that are sufficient, after provision for taxes upon and for other expenses of the use of the property, to repay in full the indebtedness, both principal and interest, and when the firm agreement and the money obligated to be paid under the agreement are assigned, pledged, or secured for the benefit of the holder of the obligation. However, where the security consists of a first mortgage lien or deed of trust on a fee interest in real property, the obligation may provide for the amortization, during the initial fixed period of the lease or contract of less than one hundred percent (100%) of the indebtedness if there is pledged or assigned, as additional security for the obligation, sufficient

C
O
P
Y

HEA 1528+



rentals payable under the lease, or of contract payments, to secure the amortized obligation payments required during the initial, fixed period of the lease or contract, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower, and if there is to be left unamortized at the end of the period an amount not greater than the original appraised value of the land only, exclusive of all improvements, as prescribed by law.

(6) In obligations secured by mortgages or deeds of trust or unencumbered real estate or perpetual leases thereon, in any state in the United States, the District of Columbia, Canada, or any province of Canada, not exceeding eighty percent (80%) of the fair value of the security determined in a manner satisfactory to the department, except that the percentage stated may be exceeded if and to the extent that the excess is guaranteed or insured by the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, any province of Canada, or by an administration, agency, authority, or instrumentality of any of such governmental units. The value of the real estate must be determined by a method and in a manner satisfactory to the department. The restrictions contained in this subdivision do not apply to loans or investments made under section 5 of this chapter.

(7) In obligations issued under or pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14) as in effect on December 31, 1990, or the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) as in effect on December 31, 1990, interest bearing obligations of the FSLIC Resolution Fund and shares of any institution that is insured by the ~~Savings Association Insurance Fund of the~~ Federal Deposit Insurance Corporation to the extent that the shares are insured, obligations issued or guaranteed by the International Bank for Reconstruction and Development, obligations issued or guaranteed by the Inter-American Development Bank, and obligations issued or guaranteed by the African Development Bank.

(8) In any mutual fund that:

- (A) has been registered with the Securities and Exchange Commission for a period of at least five (5) years immediately preceding the date of purchase;
- (B) has net assets of at least twenty-five million dollars (\$25,000,000) on the date of purchase; and
- (C) invests substantially all of its assets in investments

C
O
P
Y



permitted under this subsection.

The amount invested in any single mutual fund shall not exceed ten percent (10%) of admitted assets. The aggregate amount of investments under this subdivision may be limited by the commissioner if the commissioner finds that investments under this subdivision may render the operation of the company hazardous to the company's policyholders, to the company's creditors, or to the general public. This subdivision in no way limits or restricts investments that are otherwise specifically permitted under this section.

(9) In obligations payable in United States dollars and issued, guaranteed, assumed, insured, or accepted by a foreign government or by a solvent business entity existing under the laws of a foreign government, if the obligations of the foreign government or business entity meet at least one (1) of the following criteria:

(A) The obligations carry a rating of at least A3 conferred by Moody's Investor Services, Inc.

(B) The obligations carry a rating of at least A- conferred by Standard & Poor's Corporation.

(C) The earnings available for fixed charges of the business entity for a period of five (5) fiscal years preceding the date of purchase have averaged at least three (3) times the average fixed charges of the business entity applicable to the period, and if during either of the last two (2) years of the period, the earnings available for fixed charges were at least three (3) times the fixed charges of the business entity for the year. As used in this subdivision, the terms "earnings available for fixed charges" and "fixed charges" have the meanings set forth in IC 27-1-12-2(a).

Foreign investments authorized by this subdivision shall not exceed twenty percent (20%) of the company's admitted assets. This subdivision in no way limits or restricts investments that are otherwise specifically permitted under this section. Canada is not a foreign government for purposes of this subdivision.

(10) In the obligations of any solvent business entity existing under the laws of the United States, any state of the United States, the District of Columbia, Canada, or any province of Canada, provided that interest on the obligations is not in default.

(11) In the preferred or guaranteed shares of any solvent business entity, so long as the business entity is not and has not been for the preceding five (5) years in default in the payment of interest

C
O
P
Y



due and payable on its outstanding debt or in arrears in the payment of dividends on any issue of its outstanding preferred or guaranteed stock.

(12) In the shares, other than those specified in subdivision (7), of any solvent business entity existing under the laws of any state of the United States, the District of Columbia, Canada, or any province of Canada, and in the shares of any institution wherever located which has the insurance protection provided by the ~~Savings Association Insurance Fund of the~~ Federal Deposit Insurance Corporation. Except for the purpose of mutualization or for the purpose of retirement of outstanding shares of capital stock pursuant to amendment of its articles of incorporation, or in connection with a plan approved by the commissioner for purchase of such shares by the insurance company's officers, employees, or agents, or for the elimination of fractional shares, no company subject to the provisions of this section may invest in its own stock.

(13) In loans upon the pledge of any mortgage, stocks, bonds, or other evidences of indebtedness, acceptable as investments under the terms of this chapter, if the current value of the mortgage, stock, bond, or other evidences of indebtedness is at least twenty-five percent (25%) more than the amount loaned on it.

(14) In real estate, subject to subsections (d) and (e).

(15) In securities lending, repurchase, and reverse repurchase transactions with business entities, subject to the following requirements:

(A) The company's board of directors shall adopt a written plan that specifies guidelines and objectives to be followed, such as:

- (i) a description of how cash received will be invested or used for general corporate purposes of the company;
- (ii) operational procedures to manage interest rate risk, counterparty default risk, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and
- (iii) the extent to which the company may engage in these transactions.

(B) The company shall enter into a written agreement for all transactions authorized in this subdivision. The written agreement shall require the termination of each transaction not more than one (1) year from its inception or upon the earlier demand of the company. The agreement shall be with the

C
O
P
Y



counterparty business entity but, for securities lending transactions, the agreement may be with an agent acting on behalf of the company if the agent is a qualified business entity and if the agreement:

- (i) requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and
- (ii) prohibits securities lending transactions under the agreement with the agent or its affiliates.

(C) Cash received in a transaction under this section shall be invested in accordance with this section and in a manner that recognizes the liquidity needs of the transaction or used by the company for its general corporate purposes. For as long as the transaction remains outstanding, the company or its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the commissioner:

- (i) possession of the acceptable collateral;
- (ii) a perfected security interest in the acceptable collateral; or
- (iii) in the case of a jurisdiction outside the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(D) For purposes of calculations made to determine compliance with this subdivision, no effect may be given to the company's future obligation to resell securities in the case of a repurchase transaction, or to repurchase securities in the case of a reverse repurchase transaction. A company shall not enter into a transaction under this subdivision if, as a result of and after giving effect to the transaction:

- (i) the aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity pursuant to this subdivision would exceed five percent (5%) of its admitted assets (but, in calculating the amount sold to or purchased from a business entity pursuant to repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement); or
- (ii) the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this subdivision would exceed forty percent (40%) of its

C
O
P
Y



admitted assets.

(E) In a securities lending transaction, the company shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the company in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.

(F) In a reverse repurchase transaction, the company shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the company in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least ninety-five percent (95%) of the market value of the transferred securities.

(G) In a repurchase transaction, the company shall receive as acceptable collateral transferred securities having a market value equal to at least one hundred two percent (102%) of the purchase price paid by the company for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the company, the business entity shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least one hundred two percent (102%) of the purchase price. Securities acquired by a company in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

(16) In mortgage backed securities, including collateralized mortgage obligations, mortgage pass through securities, mortgage

C
O
P
Y

HEA 1528+



backed bonds, and real estate mortgage investment conduits, adequately secured by a pool of mortgages, which mortgages are fully guaranteed or insured by the government of the United States or any agency of the United States, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(17) In mortgage backed securities, including collateralized mortgage obligations, mortgage pass through securities, mortgage backed bonds, and real estate mortgage investment conduits, adequately secured by a pool of mortgages, if the securities carry a rating of at least:

(A) A3 conferred by Moody's Investor Services, Inc.; or

(B) A- conferred by Standard & Poor's Corporation.

The amount invested in any one (1) obligation or pool of obligations described in this subdivision shall not exceed five percent (5%) of admitted assets. The aggregate amount of all investments under this subdivision shall not exceed ten percent (10%) of admitted assets.

(18) Any other investment acquired in good faith as payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness, if taken to protect the interests of the company in that investment.

(19) In obligations or interests in trusts or partnerships in which a life insurance company may invest as described in paragraph 31 of IC 27-1-12-2(b). Investments authorized by this paragraph may not exceed ten percent (10%) of the company's admitted assets.

(20) In any other investment. The total of all investments under this subdivision, except for investments in subsidiary companies under IC 27-1-23-2.6, may not exceed an aggregate amount of ten percent (10%) of the insurer's admitted assets. Investments are not permitted under this subdivision:

(A) if expressly prohibited by statute; or

(B) in an insolvent organization or an organization in default with respect to the payment of principal or interest on its obligations.

(d) Any company subject to the provisions of this section shall have power to acquire, hold, or convey real estate, or an interest therein, as described below, and no other:

(1) Leaseholds, provided the mortgage term shall not exceed four-fifths (4/5) of the unexpired lease term, including enforceable renewable options, remaining at the time of the loan, such real estate or leaseholds to be located in the United States,

C
O
P
Y

HEA 1528+



any territory or possession of the United States, or Canada, the value of such leasehold for statement purposes shall be determined in a manner and form satisfactory to the department. At the time the leasehold is acquired and approved by the department, a schedule of annual depreciation shall be set up by the department in which the value of said leasehold is to be depreciated, and said depreciation is to be averaged out over not exceeding a period of fifty (50) years.

(2) The building in which it has its principal office and the land on which it stands.

(3) Such as shall be necessary for the convenient transaction of its business.

(4) Such as shall have been acquired for the accommodation of its business.

(5) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(6) Such as shall have been conveyed to it in connection with its investments in real estate contracts or its investments in real estate under lease or for the purpose of leasing or such as shall have been acquired for the purpose of investment under any law, order, or regulation authorizing such investment, for statement purposes, the value of such real estate shall be determined in a manner satisfactory to the department.

(7) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or in exchange for real estate so conveyed to it.

(8) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

(e) All real estate described in subsection (d)(4) through (d)(8) which is not necessary for the convenient transaction of its business shall be sold by said company and disposed of within ten (10) years after it acquired title to the same, or within five (5) years after the same has ceased to be necessary for the accommodation of its business, unless the company procures the certificate of the commissioner that its interests will suffer materially by a forced sale of the real estate, in which event the time for the sale may be extended to such time as the commissioner directs in the certificate.

SECTION 31. IC 28-1-1-3, AS AMENDED BY P.L.217-2007, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. Unless a different meaning is required by the context, the following definitions apply throughout this article:

(1) "Financial institution" means any bank, trust company,

C
O
P
Y

HEA 1528+



corporate fiduciary, savings association, credit union, savings bank, bank of discount and deposit, or industrial loan and investment company organized or reorganized under the laws of this state, and includes ~~a consumer finance institution licensed to make supervised or regulated loans~~ licensees under IC 24-4.4 and IC 24-4.5.

(2) "Bank" or "bank or trust company" means a financial institution organized or reorganized as a bank, bank of discount and deposit, or trust company under the laws of this state with the express power to receive and accept deposits of money subject to withdrawal by check, and possessing such other rights and powers granted by the provisions of this article in express terms or by implication. The term "bank" or "bank or trust company" does not include a savings association, credit union, or industrial loan and investment company.

(3) "Domestic corporation" means a corporation formed under the laws of this state, and "foreign corporation" means every other corporation.

(4) "Articles of incorporation" includes both the original articles of incorporation and any and all amendments thereto, except where the original articles of incorporation only are expressly referred to, and includes articles of merger and consolidation, and, in the case of corporations organized before July 1, 1933, articles of reorganization, and all amendments thereto.

(5) "Incorporator" means one (1) of the signers of the original articles of incorporation.

(6) "Subscriber" means one who subscribes for shares of stock in a financial institution.

(7) "Shareholder" means one who is a holder of record of shares of stock in a financial institution.

(8) "Capital stock" means the aggregate amount of the par value of all shares of capital stock.

(9) "Capital" means the aggregate amount paid in on the shares of capital stock of a financial institution issued and outstanding.

(10) "Capital and surplus" or "unimpaired capital and unimpaired surplus" has the meaning set forth in 12 CFR 32.2.

(11) "Assets" includes all of the property and rights of every kind of a financial institution, and the term "fixed assets" means such assets as are not intended to be sold or disposed of in the ordinary course of business.

(12) "Principal office" means that office maintained by the financial institution in this state, the address of which is required

C
O
P
Y



by the provisions of this article to be kept on file in the office of the secretary of state.

(13) "Subscription" means any written agreement or undertaking, accepted by a financial institution, for the purchase of shares of capital stock in the financial institution.

(14) "Department" means the department of financial institutions.

(15) "Member" means a member of the department of financial institutions.

(16) "Branch" means any office, agency, or other place of business, other than the principal office of a financial institution, at which deposits are received, checks paid, or money lent.

(17) "Subsidiary" means any foreign or domestic corporation or limited liability company in which the parent bank, savings bank, savings association, or industrial loan and investment company had at least eighty percent (80%) ownership before July 1, 1999, or is formed or acquired in accordance with IC 28-13-16 after June 30, 1999.

(18) "Savings bank" means a financial institution that:

(A) was organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993;

(B) is formed as the result of a conversion under:

- (i) IC 28-1-21.7;
- (ii) IC 28-1-21.8;
- (iii) IC 28-1-21.9; or
- (iv) IC 28-1-30; or

(C) is incorporated under IC 28-12.

(19) "Corporate fiduciary" means a financial institution whose primary business purpose is to engage in the trust business (as defined in IC 28-14-1-8) and the execution and administration of fiduciary accounts as a nondepository trust company incorporated under Indiana law.

SECTION 32. IC 28-1-2-23, AS AMENDED BY P.L.35-2010, SECTION 97, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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, or industrial loan and investment company unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days following receipt of an application to issue a notice approving the proposed change in control. The application shall contain the name and address

C
O
P
Y

HEA 1528+



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~~ **director** 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~~ **director** determines that any material information submitted is substantially inaccurate; or

(C) the ~~department~~ **director** 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", 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,

C
O
P
Y



or otherwise; or

(2) vote at least twenty-five percent (25%) 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 a transaction if the director determines that the direct or beneficial ownership of the bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company 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 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 33. IC 28-1-7.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 7.1. Voluntary Supervisory Conversion

Sec. 1. As used in this chapter, "depository financial institution" has the meaning set forth in IC 28-1-1-6, but does not include a credit union.

Sec. 2. As used in this chapter, "standard conversion" refers to a transaction permitted under any of the following:

- (1) IC 28-1-21.4.
- (2) IC 28-1-21.6.
- (3) IC 28-1-21.8.
- (4) IC 28-1-21.9.

Sec. 3. A depository financial institution with mutual ownership may engage in a voluntary supervisory conversion only as set forth in this chapter.

Sec. 4. A voluntary supervisory conversion of a depository financial institution may include one (1) or more of the following transactions:

- (1) A merger of the depository financial institution into an interim depository financial institution with stock ownership.
- (2) Following a conversion of the depository financial

C
O
P
Y



institution, a sale of shares of the converted depository financial institution directly to an acquirer, which may be a person, company, depository institution, or depository institution holding company.

(3) A merger or consolidation with an existing or newly created depository financial institution. Except as provided in this chapter, a merger or consolidation under this subdivision must be authorized by, and is subject to, any other applicable laws and regulations.

Sec. 5. A depository financial institution with mutual ownership is eligible for a voluntary supervisory conversion under this chapter if, in the judgment of the director, the voluntary supervisory conversion satisfies at least one (1) of the following conditions:

(1) Both of the following apply:

(A) The depository financial institution is significantly undercapitalized, or is undercapitalized and a standard conversion to stock form is not feasible.

(B) After the voluntary supervisory conversion, the converted depository financial institution will likely be a viable entity, or the one (1) or more entities resulting from the voluntary supervisory conversion will likely be viable entities.

(2) Severe financial conditions threaten the stability of the depository financial institution and a voluntary supervisory conversion to stock form is likely to:

(A) improve the financial condition of the depository financial institution; or

(B) result in one (1) or more entities with an improved financial condition.

(3) The depository financial institution is in receivership or conservatorship, or in imminent danger of receivership or conservatorship, and the voluntary supervisory conversion will enable the depository financial institution to:

(A) terminate the receivership or conservatorship; or

(B) avoid the institution of a receivership or conservatorship.

Sec. 6. (a) The director may determine under section 5(1)(B) of this chapter, based upon information then available to the director, that a voluntary supervisory conversion will likely result in a depository financial institution becoming a viable entity with stock ownership if all the following are satisfied:

**C
O
P
Y**



(1) The depository financial institution resulting from the conversion will be adequately capitalized.

(2) The depository financial institution resulting from the conversion, and any person acquiring capital stock in the depository financial resulting from the conversion, will comply with all applicable supervisory policies.

(3) The depository financial institution involved in, or the one (1) or more entities resulting from, the conversion will be insured by the Federal Deposit Insurance Corporation.

(4) The voluntary supervisory conversion is in the best interest of:

- (A) the depository financial institution involved in, or the one (1) or more entities resulting from, the conversion; and
- (B) the public.

(5) The voluntary supervisory conversion will not injure or be detrimental to:

- (A) the depository financial institutions involved in, or the one (1) or more entities resulting from, the conversion; or
- (B) the public interest.

(b) The director may act on a voluntary supervisory merger, consolidation, sale, or other disposition on behalf of the department.

(c) Except as otherwise provided in this chapter, a provision of IC 28-1-7 concerning mergers or consolidations applies to a voluntary supervisory conversion under this chapter unless the director determines that the provision should be waived or considered inapplicable with respect to a particular voluntary supervisory conversion. The director may make a determination described in this subsection if the director finds, in the director's discretion, that the determination will:

- (1) facilitate the consummation of the voluntary supervisory conversion; and
- (2) in the director's judgment and considering the available information under the prevailing circumstances, result in one (1) or more entities that are more favorable to the public than if:
 - (A) the provision were not waived or considered inapplicable; or
 - (B) the voluntary supervisory conversion were not approved.

Sec. 7. Depositors of a depository financial institution with mutual ownership do not have the right to approve or participate

C
O
P
Y



in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted depository financial institution, unless the department allows otherwise. Depositors may have interests in a liquidation account, if one is established.

Sec. 8. A majority of the board of directors of a depository financial institution with mutual ownership must adopt a plan of voluntary supervisory conversion. The plan adopted must include the following:

- (1) The name and address of the depository financial institution.
- (2) The name and address of each proposed purchaser of conversion shares and a description of that purchaser's relationship to the depository financial institution.
- (3) The title, per unit par value, number, and per unit and aggregate offering price of shares that the converted depository financial institution will issue.
- (4) The number and percentage of shares that each investor will purchase or acquire in a merger or other combination.
- (5) The aggregate number and percentage of shares that each director or officer of the converted depository financial institution, and any affiliates or associates of the director or officer, will purchase.
- (6) A description of any liquidation account to be established in connection with the voluntary supervisory conversion.
- (7) Certified copies of all resolutions of the board of directors of the depository financial institution relating to the conversion.

Sec. 9. The following information and documents must be included in an application for a voluntary supervisory conversion made to the department:

- (1) Evidence establishing that the depository financial institution with mutual ownership meets the eligibility requirements set forth in this chapter.
- (2) An opinion of qualified, independent counsel or of an independent, certified public accountant concerning the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax free reorganization.
- (3) A plan of voluntary supervisory conversion that complies with section 8 of this chapter.
- (4) A business plan, when required by the department.
- (5) The depository financial institution's most recent audited

**C
O
P
Y**



financial statements and call report.

(6) A detailed explanation of how the current capital levels make the depository financial institution eligible to engage in a voluntary supervisory conversion under this chapter.

(7) A description of the estimated conversion expenses.

(8) Evidence supporting the value of any noncash asset contributions. Appraisals must be acceptable to the department and each noncash asset must meet all other department policy guidelines.

(9) Pro forma financial statements that reflect the effects of the transaction. The depository financial institution must identify its tangible, core, and risk based capital levels and show the adjustments necessary to compute the pro forma capital levels. The depository financial institution must prepare its pro forma statements in conformance with department regulations and policy.

(10) The proposed articles of incorporation and bylaws, if any, of the depository financial institution formed as a result of the voluntary supervisory conversion.

(11) The proposed stock certificate form, if any, for the depository financial institution formed as a result of the voluntary supervisory conversion.

(12) A copy of any agreements between the depository financial institution formed as a result of the voluntary supervisory conversion and proposed purchasers.

(13) A copy and description of all existing and proposed employment contracts. The depository financial institution formed as a result of the voluntary supervisory conversion must include information describing the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(14) Any:

(A) required filings under federal law; or

(B) waivers of compliance with federal law obtained as a result of conflicts with state law.

(15) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for Federal Home Loan Bank membership or FDIC insurance of accounts, if applicable.

(16) A statement describing any other applications required

**C
O
P
Y**



under federal or state banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the department, copies of the applications and related documents.

(17) A description of any of the features of the application that do not conform to the requirements of this section, including any request for waiver of such requirements.

Sec. 10. The director may not approve an application to engage in a voluntary supervisory conversion if the director makes any of the following findings:

(1) That the depository financial institution does not meet the eligibility requirements for a voluntary supervisory conversion under this chapter, or that the proceeds from the sale of the conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement.

(2) That the transaction is detrimental to or would cause potential injury to the depository financial institution or is contrary to the public interest.

(3) That the depository financial institution or its acquirer, or the controlling parties or directors and officers of the depository financial institution or its acquirer, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion.

(4) That the depository financial institution fails to justify an employment contract incidental to the conversion, or that the employment contract will be an unsafe or unsound practice or represent a sale of control.

Sec. 11. (a) The director shall condition approval of a voluntary supervisory conversion application on the applicant satisfying all of the following:

(1) The depository financial institution must complete the conversion stock sale, if any, not later than three (3) months after the director approves the application. The director may grant an extension for good cause.

(2) The depository financial institution and its acquirer must comply with all applicable laws, rules, and regulations.

(3) The depository financial institution and its acquirer must satisfy any other requirements or conditions imposed by the director.

(4) The depository financial institution involved in, or the one

**C
O
P
Y**



(1) or more entities resulting from, the voluntary supervisory conversion must obtain insurance coverage of their deposits by the Federal Deposit Insurance Corporation.

(b) The director may condition approval of a voluntary supervisory conversion application on either of the following:

(1) The applicant must satisfy any conditions and restrictions the director imposes to prevent unsafe or unsound practices, to protect the public interest, or to prevent potential injury or detriment to the depository financial institution before and after the conversion. The director may impose these conditions and restrictions on the depository financial institution (before and after the conversion), its acquirer, controlling parties, or directors and officers of the depository financial institution or its acquirer.

(2) A larger amount of capital, if necessary, for safety and soundness reasons must be infused following the voluntary supervisory conversion.

SECTION 34. IC 28-1-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) Except as otherwise provided in this article, the business of dealing in investment securities by any bank or trust company is limited to purchasing and selling securities without recourse, solely upon the order and for the account of customers and in no event for its own account. A bank or trust company may not underwrite or guarantee all or any part of any issue of securities other than obligations issued or guaranteed by or on behalf of the state or any political subdivision of the state or any agency or instrumentality of either. A bank or trust company may purchase for its own account and sell investment securities under such limitations and restrictions as the department prescribes by rule, but in no event may the total amount of the investment securities of any one (1) obligor or maker, purchased or held by a bank or trust company for its own account, exceed at any time ten percent (10%) of the amount of the total equity capital of the bank or trust company. The limitations imposed by this section do not apply to the direct or indirect obligations of the United States or the direct obligations of a United States territory or insular possession or of the state of Indiana or any municipal corporation or taxing district in Indiana. A bank or trust company may purchase for its own account and sell shares of stock in federal or state chartered small business investment companies that have received a permit or license to operate under the federal Small Business Investment Act (15 U.S.C. 681). However, a bank or trust company may not acquire shares in any small business investment company if,

**C
O
P
Y**

HEA 1528+



upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed five percent (5%) of its total equity capital.

(b) A bank or trust company may purchase for its own account and sell:

- (1) shares of open-end investment companies the portfolios of which consist solely of securities that are eligible for purchase and sale by national banking associations; and
- (2) collateralized obligations that are eligible for purchase and sale by national banking associations. However, a bank or trust company may purchase for its own account and sell the obligations only to the extent that a national banking association can purchase and sell those obligations.

(c) A bank or trust company may deposit its funds in:

- (1) a federally chartered savings association; or
- (2) a savings association or other entity organized and operated according to federal law or the laws of any state or the District of Columbia;

the accounts of which are insured by the ~~Saving Association Insurance Fund~~ of the Federal Deposit Insurance Corporation.

(d) A bank or trust company 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 subsection, a security is speculative or has speculative characteristics if at the time of purchase the security:

- (1) is rated below the first four (4) rating classes by a generally recognized security rating service; **or**
- (2) is in default; **or**
- (3) is otherwise considered speculative by the director.**

(e) A bank or trust company may purchase for its own account a security that is not rated by a generally recognized security rating service if:

- (1) the bank or trust company at the time of purchase obtains financial information that is adequate to document the investment quality of the security; **and**
- (2) the security is not otherwise considered speculative by the director.**

(f) Except as otherwise authorized by this title, a bank or trust company may not purchase any share of stock of a corporation that is not a subsidiary of that bank or trust company unless the purchase is considered expedient to prevent loss from a debt previously contracted

C
O
P
Y



in good faith. Any shares of stock thus acquired by a bank or trust company that would not have been eligible for purchase shall be sold and disposed of within six (6) months from the date of acquisition unless the director grants an extension of time for the sale and disposition.

(g) Notwithstanding any other provision of this article, a bank or trust company may purchase for its own account shares of stock of a banker's bank insured by ~~the Bank Insurance Fund~~ of the Federal Deposit Insurance Corporation or a holding company that owns or controls a banker's bank insured by ~~the Bank Insurance Fund~~ of the Federal Deposit Insurance Corporation. For the purposes of this subsection, a "banker's bank" is a bank (as defined in IC 28-2-14-2):

- (1) the stock of which is owned exclusively by other banks (as defined in IC 28-2-14-2), or by a bank holding company the stock of which is owned exclusively by other banks (as defined in IC 28-2-14-2); and
- (2) that is engaged exclusively in providing services to other banks (as defined in IC 28-2-14-2), and to their officers, directors, and employees.

A bank's or trust company's holdings of the stock of an insured banker's bank or of a holding company that owns or controls an insured banker's bank may not exceed ten percent (10%) of the capital and surplus of the bank or trust company. A bank or trust company may not purchase the stock of an insured banker's bank or of a holding company that owns or controls an insured banker's bank if, after the purchase, the bank or trust company would own more than five percent (5%) of any class of voting securities of the banker's bank or holding company.

(h) Notwithstanding any other provision of this article, a bank or trust company may invest in a casualty insurance company organized solely for the purpose of insuring banks, trust companies, and bank holding companies and their officers and directors from and against liabilities, including those covered by bankers' blanket bonds and director and officer liability insurance and other public liability insurance. The investment must take the form of:

- (1) the purchase for the bank's or trust company's own account of shares of stock of the casualty insurance company or shares of stock of an association of banks organized for the purpose of funding the casualty insurance company; or
- (2) loans to such an association of banks.

The total investment of any bank or trust company under this subsection may not exceed five percent (5%) of the capital and surplus of the bank or trust company.

**C
O
P
Y**

HEA 1528+



(i) Any bank or trust company may establish or acquire a subsidiary that engages in:

- (1) the sale, distribution, or underwriting of securities issued by investment companies (as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3); or
- (2) the underwriting or distribution of securities backed by or representing an interest in mortgages.

(j) As used in this section, "total equity capital" means unimpaired capital stock, unimpaired surplus, unimpaired undivided profits, subordinated debt that has been approved by the state or federal regulatory agencies, and one hundred percent (100%) of loan reserves.

(k) The department may define an investment security by department policy or by rule.

(l) A bank or trust company may establish a trading account for the purchase and resale of securities that are otherwise eligible for purchase or resale by the bank or trust company. The trading account must comply with the requirements established by policy or rule of the department.

(m) A bank or trust company 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.

SECTION 35. IC 28-1-20-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.1. (a) When a statement of account has been delivered by a bank or savings bank to a depositor, the account, after the period of three (3) years from the date of its delivery, shall be deemed finally adjusted and its correctness conclusively presumed. A statement of account or a passbook is delivered to a depositor, within the meaning of this subsection, when received by the depositor or the depositor's agent in person or when mailed to the depositor at the depositor's last known address. This section does not relieve the depositor from the duty of exercising due diligence in the examination of the statement of account. A depositor must immediately notify the bank or savings bank upon discovery of any error in the statement of account.

(b) Any bank, savings bank, or trust company may impose and collect a monthly service charge and maintenance charge on dormant accounts, ~~whether time or demand; in such reasonable amounts as may be that:~~

- (1) ~~are reasonable, as~~ determined by resolution of the board of directors; and ~~that~~
- (2) are properly disclosed to ~~its~~ **the bank's, savings bank's, or**

C
o
p
y



trust company's depositors.

(c) For the purpose of this section:

(1) ~~every demand deposit~~ **a transaction account (as defined in 12 CFR 204.2(e))** is considered a dormant account after one (1) year from the date of the last transaction recorded on the books of the bank, savings bank, or trust company with respect to the account; and

(2) ~~every time deposit~~ **any other account that is not a transaction account (as defined in 12 CFR 204.2(e))** is considered a dormant account after three (3) years from the date of the last transaction recorded on the books of the bank, savings bank, or trust company with respect to the account.

(d) Any bank, savings bank, or trust company may impose and collect monthly service charges and maintenance charges on active accounts ~~whether time or demand~~; that are carried by it on its books, in such amounts as may be agreed upon between it and its depositors.

(e) This section is applicable to national banking associations doing business in this state.

SECTION 36. IC 28-1-29-1, AS AMENDED BY P.L.35-2010, SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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, other entities, and their affiliates, however organized.

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

(A) 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".

The term does not include a person that provides debt settlement services (as defined in IC 24-5-15-2.5).

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

C
O
P
Y



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 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 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;

C
O
P
Y



- (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 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 37. IC 28-1-29-3, AS AMENDED BY P.L.35-2010, SECTION 120, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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

C
O
P
Y



located in Indiana; or

(2) the person:

- (A) contracts with debtors who are residents of Indiana; or
- (B) solicits business from residents of Indiana by advertisements or other communications sent or delivered through any of the following means:
 - (i) Mail.
 - (ii) Personal delivery.
 - (iii) Telephone.
 - (iv) Radio.
 - (v) Television.
 - (vi) The Internet or other electronic communications.
 - (vii) Any other means of communication.

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

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

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

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

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

(d) The fee for a license or renewal **of a license** 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 and any related documents that are required to be

C
O
P
Y



submitted with ~~the~~ a renewal **application** 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) **except in a transaction approved under section 3.1 of this chapter**, is not assignable or transferable; and

(2) **in order to remain in force**, 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 38. IC 28-1-29-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 3.1. (a) As used in this section, "control" means possession of the power directly or indirectly to:**

(1) **direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or**

(2) **vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.**

(b) **An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.**

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

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

**C
O
P
Y**

HEA 1528+



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

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

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

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

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

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the licensee. The report required by this section must be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 3 of this chapter, instead of acquiring control of the licensee under this section.

SECTION 39. IC 28-1-29-4.1, AS AMENDED BY P.L.35-2010, SECTION 122, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4.1. (a) A license issued by the department under this chapter shall be revoked or suspended by the

**C
O
P
Y**



department if the ~~person~~ **licensee** fails to:

- (1) file any renewal application prescribed by the director; or
- (2) pay any license renewal fee described under section 3 of this chapter;

within sixty (60) days after the date the renewal is due.

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

- (1) pay all delinquent fees and apply for **a new reinstatement of the license**; or
- (2) appeal the revocation **or suspension** to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from ~~the~~ **a** hearing under IC 4-21.5-3 concerning ~~the~~ **a** license revocation ~~the~~ **or suspension, the** license remains in force.

SECTION 40. IC 28-1-29-7.7, AS ADDED BY P.L.35-2010, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 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

C
O
P
Y



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 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".

COPY



(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 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".

(2) 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.

(3) Nonpayment of your debts under our program may:
(A) hurt your ability to obtain credit;
(B) lead your creditors to increase finance and other charges; and

C
o
p
y



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

(4) 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 41. IC 28-1-29-8, AS AMENDED BY P.L.35-2010, SECTION 127, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (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.
 - (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,

**C
O
P
Y**



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 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.

(d) All creditors must be notified of the debtor's and licensee's relationship.

(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 automated clearinghouse withdrawal as authorized by the contract debtor.

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

C
O
P
Y



management plan of the cancellation by the contract debtor.

(g) A licensee may not enter into 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 plan. The following must be included in the budget analysis:

- (1) Documentation and verification of all income considered. All income verification ~~shall~~ **must** be dated not more than sixty (60) days before the completion of the budget analysis.
- (2) Monthly living expense figures, **which** 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.

(h) A licensee may not enter into an agreement with a contract debtor for a period longer than 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 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:

- (1) may not increase the **amount of the monthly fee** ~~percentage as originally calculated~~ under section ~~8.3(c)(2)(A)~~ **8.3(c)(2)** of this chapter; **and**
- (2) **must decrease the amount of the monthly fee as originally calculated under section 8.3(c)(2) of this chapter if applying the percentage specified in section 8.3(c)(2)(A) of this chapter to the new monthly amount of indebtedness to be paid through the licensee (as of the date of the review under this subsection) would result in an amount that is less than seventy-five dollars (\$75) in any month;**

during the term of the original debt management plan agreement.

(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:

C
O
P
Y



(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.

- (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.

(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 42. IC 28-1-29-8.3, AS ADDED BY P.L.35-2010, SECTION 128, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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:

- (1) 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; **and**
(2) **at least one (1) payment has been made to a creditor under the plan.**

All creditors must be notified of the debtor's and licensee's relationship.

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

- (1) A set up fee of not more than fifty dollars (\$50) for consultation, obtaining a credit report, and setting up an account. Acceptance of a plan payment constitutes agreement by the creditor to the plan. **A set up fee under this subdivision may not be collected until the debtor, or the licensee on behalf of the debtor, has made at least one (1) payment to a creditor under the plan.**
(2) A monthly service fee of the lesser of:

C
o
p
y



(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 conferred on~~ the contract debtor **in connection with the charge**. Supporting documents may be required by the department. The department shall determine whether the charge:

(1) would be ~~of imposed in relation to some~~ benefit ~~to conferred on~~ the consumer; and

(2) is reasonable in relation to the ~~benefits~~ **benefit conferred**.

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

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

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

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

SECTION 43. IC 28-1-29-9, AS AMENDED BY P.L.35-2010, SECTION 131, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. (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

C
O
P
Y



~~following receipt,~~ **the funds are received**, 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)~~ **thirty (30)** days after 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 a 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 **or a licensee's employee** discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation

C
O
P
Y



of money held in trust, the licensee **or the licensee's employee** 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 **or the licensee's employee** discovers, or has a reasonable suspicion of, the embezzlement or other unlawful appropriation.

(g) If a contract debtor terminates an agreement or it becomes 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~~ **the fee that are is** 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.

(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 provide~~ such an accounting to a contract debtor ~~within not later than~~ seven (7) days after written demand, but **is not required to provide** more than three (3) **such accountings** per six (6) month period.

(j) Upon the completion or termination of a contract between a licensee and a contract debtor, the licensee shall ~~mail provide~~ 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 44. IC 28-1-29-13, AS AMENDED BY P.L.35-2010, SECTION 135, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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,

C
O
P
Y



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)~~ **(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)~~ **(3)** 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) Subject to subsection (c), if the department determines, after notice and an opportunity 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 section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

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

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

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

~~(e)~~ **(f)** In determining the amount of a civil penalty to impose under subsection ~~(a)~~ or **(b) or (c)**, 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)~~ **(g)** In addition to the revocation provision of section 4 of this chapter, a person who violates section 3, 5, 6, 8, 8.3, 9, or 9.5 of this chapter commits a Class A misdemeanor, and the license of the

C
O
P
Y



licensee shall be revoked on the date of the conviction of an offense.

SECTION 45. IC 28-6.1-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. A savings bank may deposit its funds in:

- (1) a federally chartered savings association; or
- (2) a savings association or other entity organized and operated according to federal law or the laws of a state or the District of Columbia;

the accounts of which are insured by the ~~Savings Association Insurance Fund~~ of the Federal Deposit Insurance Corporation.

SECTION 46. IC 28-6.1-10-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8.5. (a) A savings bank 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 subsection, a security is speculative or has speculative characteristics if at the time of purchase the security:

- (1) is rated below the first four (4) rating classes by a generally recognized security rating service; or
- (2) is in default; or
- (3) is otherwise considered speculative by the director.**

(b) A savings bank may purchase for its own account a security that is not rated by a generally recognized security rating service if:

- (1) the savings bank at the time of purchase obtains financial information that is adequate to document the investment quality of the security; and
- (2) the security is not otherwise considered speculative by the director.**

SECTION 47. IC 28-7-1-9, AS AMENDED BY P.L.35-2010, SECTION 148, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 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

C
O
P
Y



are not in default.

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

(C) 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 ~~§ 28-7-1-31.5~~, **section 31.5 of this chapter**, 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) Shares or certificates of an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 15 U.S.C. 80a-3 and 15 U.S.C. 80a-4 through 15 U.S.C. 80a-64), if all of the following conditions are met:

- (i) The fund's assets consist of and are limited to securities in which a credit union may invest directly.
- (ii) The credit union has an equitable and undivided interest in the underlying assets of the fund.
- (iii) The credit union is not liable for acts or obligations of the fund.
- (iv) The credit union's investment in any one (1) fund does not exceed fifteen percent (15%) of the amount of the credit union's net worth.

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

C
o
p
y



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, **or is otherwise considered speculative by the director.**

(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 **and if the security is not otherwise considered speculative by the director.**

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

(vi) Except as otherwise authorized by this title, a credit union may not purchase any share of stock of a corporation. If a credit union possesses stock or another equity investment as a result of a loan default, the credit union shall dispose of the investment within a reasonable period that does not exceed one (1) year or a longer period if approved by the department.

(vii) Subject to items (i) through (iv), a credit union may

C
O
P
Y



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).

(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 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

C
O
P
Y



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.

(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.

(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.

(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.

(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.

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

(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.

(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

C
O
P
Y

HEA 1528+



may rent excess space at the credit union's main office or branch as a source of income.

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

(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.

(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.

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

(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.

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

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

(19) To issue shares 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.

(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

C
O
P
Y



(except for this section) or any rule adopted under the Indiana Code;

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

(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.

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

(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.

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

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

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

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

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.1%) 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.

(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.

C
O
P
Y



(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).

(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 48. IC 28-7-1-10.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10.6. A credit union may issue shares in a revocable or irrevocable trust, subject to the following:**

(1) If shares are issued in a revocable trust, at least one (1) of the settlors must be a member of the credit union in the settlor's own right.

(2) If shares are issued in an irrevocable trust, at least one (1):

- (A) settlor; or**
- (B) beneficiary;**

must be a member of the credit union in the settlor's or the beneficiary's own right.

(3) The name of each beneficiary must be listed for the trust, whether the trust is revocable or irrevocable.

SECTION 49. IC 28-7-1-11, AS AMENDED BY P.L.141-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. Each credit union shall make a call report of its condition to the department, at least quarterly on forms **and in accordance with guidelines** approved by the director. Reports in addition to the regular reports may be required. A credit union that fails to comply with this section may be required by the department to pay a civil penalty of one hundred dollars (\$100) for each day of noncompliance. Money paid under this section as determined by the department shall be deposited into the financial institutions fund

C
O
P
Y



established by IC 28-11-2-9. Except as specified in IC 28-11-3-3 concerning individual depositors, any information contained in call reports made by credit unions to the department must be made available to any person upon request.

SECTION 50. IC 28-7-5-8, AS AMENDED BY P.L.35-2010, SECTION 171, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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, **any employee of the applicant**, and any significant affiliate of the applicant;
- (2) each 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. 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 51. IC 28-7-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. ~~The~~ **Except in a**

C
O
P
Y

HEA 1528+



transaction approved under section 9.1 of this chapter, a license shall not be transferable or assignable. More than one (1) place of business may be maintained under the same license.

SECTION 52. IC 28-7-5-9.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9.1. (a) As used in this section, "control" means possession of the power directly or indirectly to:

(1) direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

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

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

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

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

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

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

(d) The department shall issue a notice approving the

**C
O
P
Y**



application only after it is satisfied that both of the following apply:

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the licensee. The report required by this section must be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 4 of this chapter, instead of acquiring control of the licensee under this section.

SECTION 53. IC 28-7-5-11, AS AMENDED BY P.L.35-2010, SECTION 174, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) **To remain in force, a license must be renewed before June 1 of each year, beginning with the year following the date of issuance. A licensee may renew a license issued under this chapter by filing a renewal application prescribed by the director. The department shall prescribe the form of the renewal application. To be accepted for processing, a renewal application must be accompanied by:**

(1) the license renewal fee fixed by the department under IC 28-11-3-5; and

(2) all other information and documents requested by the director. ~~must be filed with the renewal application.~~

(b) The department may ~~impose~~ **fix** a daily late fee ~~fixed by the department under IC 28-11-3-5~~ **on any for a:**

(1) **renewal application; or**

(2) license renewal fee;

that is ~~not received before~~ **received by the department after** June 1.

**C
O
P
Y**

HEA 1528+



SECTION 54. IC 28-7-5-13.1, AS AMENDED BY P.L.57-2006, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13.1. (a) A license issued by the department under this chapter ~~shall~~ **may** be revoked **or suspended** by the department if the licensee fails to:

- (1) file any renewal form required by the department; or
- (2) pay any license renewal fee described under section 11 of this chapter;

~~for a period of at least six (6) months:~~ **not later than sixty (60) days after the due date.**

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

- (1) pay all delinquent fees and apply for ~~a new reinstatement of the person's~~ **the person's** license; or
- (2) appeal the revocation **or suspension** to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from ~~the a~~ hearing under IC 4-21.5-3 concerning ~~the a~~ license revocation ~~the or suspension~~, **the** license remains in force.

SECTION 55. IC 28-8-4-1, AS AMENDED BY P.L.57-2006, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. ~~(a)~~ This chapter does not apply to the following:

- (1) The United States or an instrumentality of the United States.
- (2) The state, a political subdivision of the state, or an instrumentality of the state or of a political subdivision of the state.
- (3) A bank, a bank holding company, an industrial loan and investment company, a credit union, a savings association, a savings bank, a mutual bank, or a mutual savings bank organized under the laws of any state or the United States.
- (4) A stored value card issued by a state or federally chartered financial institution.

~~(b) Unless otherwise provided in this chapter, this chapter does not apply to an authorized delegate of a person:~~

- ~~(1) licensed under this chapter or excluded under subsection (a); and~~
- ~~(2) acting within the scope of authority conferred by a written contract conforming to the requirements of section 49 of this chapter:~~

SECTION 56. IC 28-8-4-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13. As used in this chapter, "money transmission" means:

C
O
P
Y



- (1) the sale or issuance of payment instruments **primarily for personal, family, or household purposes**; or
- (2) engaging in the business of:
 - (A) receiving money for transmission from; or
 - (B) transmitting money to;
 any location and by any means, including a payment instrument, wire, facsimile, or electronic transfer, **primarily for personal, family, or household purposes**.

SECTION 57. IC 28-8-4-25, AS AMENDED BY P.L.1-2009, SECTION 150, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 25. In addition to the items listed in section 24 of this chapter, if an applicant is not organized as a sole proprietorship, the applicant must provide the following items and information relating to the applicant's organizational structure:

- (1) State of incorporation or organization.
- (2) Date of incorporation or organization.
- (3) A certificate from the state in which the applicant was incorporated or organized stating that the entity is in good standing.
- (4) A description of the organizational structure of the applicant, including the following:
 - (A) The identity of the parent of the applicant.
 - (B) The identity of each subsidiary of the applicant.
 - (C) The names of the stock exchanges, if any, in which the applicant, the parent, and the subsidiaries are publicly traded.
- (5) The:
 - (A) name;
 - (B) business address;
 - (C) residence address; and
 - (D) employment history;

for each individual described in section 35(b)(2) or 35(b)(3) of this chapter.

- (6) The:
 - (A) history of material litigation; and
 - (B) history of criminal indictments, convictions, and guilty or nolo contendere pleas for felonies involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;

for each individual described in section 35(b)(2) or 35(b)(3) of this chapter.

- (7) Except as provided in subdivision (8), copies of the applicant's audited financial statements for the current year and, if available,

C
O
P
Y



for the preceding two (2) years, including a:

- (A) balance sheet;
- (B) statement of income or loss;
- (C) statement of changes in shareholder equity; and
- (D) statement of changes in financial position.

A financial statement required to be submitted under this subdivision must be prepared by a certified public accountant authorized to do business in the United States in accordance with AICPA Statements on Standards for Accounting and Review Services (SSARS).

(8) If the applicant is a wholly owned subsidiary of:

- (A) a corporation publicly traded in the United States, financial statements for the current year or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the preceding three (3) years may be submitted with the applicant's unaudited financial statements; or
- (B) a corporation publicly traded outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted with the applicant's unaudited financial statements.

(9) Copies of filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, not more than one (1) year before the date of filing of the application.

SECTION 58. IC 28-8-4-40.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 40.1. Except in a transaction approved under section 40.2 of this chapter, a license is not transferable or assignable.**

SECTION 59. IC 28-8-4-40.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 40.2. (a) As used in this section, "control" means possession of the power directly or indirectly to:**

- (1) direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or**
- (2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.**

(b) An organization or an individual acting directly, indirectly,

**C
O
P
Y**



or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

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

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

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

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

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

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

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

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or

C
O
P
Y



an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the licensee. The report required by this section must be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 20 of this chapter, instead of acquiring control of the licensee under this section.

SECTION 60. IC 28-8-4-48.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 48.1. (a) A license issued by the department under this chapter ~~shall~~ **may be revoked or suspended** by the department if the person fails to:

- (1) file any renewal form required by the department; or
- (2) pay any license renewal fee described under section 37 of this chapter;

~~for a period of at least two (2) years:~~ **not later than sixty (60) days after the due date.**

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

- (1) pay all delinquent fees and apply for a ~~new~~ **reinstatement of the person's** license; or
- (2) appeal the revocation **or suspension** to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from ~~the~~ **a hearing** under IC 4-21.5-3 concerning ~~the~~ license revocation ~~the~~ **or suspension**, a license remains in force.

SECTION 61. IC 28-8-4-53 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 53. ~~(a) If, after notice and a hearing conducted in accordance with IC 4-21.5, the director finds that a person has violated this chapter, the director may order the person to pay to the director a civil penalty in an amount specified by the director, not to exceed one thousand dollars (\$1,000) for each violation:~~

~~(b) If, after notice and a hearing conducted in accordance with IC 4-21.5, the director finds that a person is engaged in a continuing violation of this chapter, the director may order the person to pay to the director a civil penalty in an amount specified by the director, not to exceed the greater of:~~

- ~~(1) one thousand dollars (\$1,000) for each day that the violation continues; or~~
- ~~(2) fifty thousand dollars (\$50,000).~~

**C
O
P
Y**



The provisions of IC 4-21-5 shall apply to such hearing.

(a) If the department determines, after notice and an opportunity 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 upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

(b) A penalty collected under this section shall be deposited into the financial institutions fund established by IC 28-11-2-9.

SECTION 62. IC 28-8-5-1, AS AMENDED BY P.L.217-2007, SECTION 83, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) This chapter does not apply to a financial institution organized under IC 28 or federal law.

(b) This chapter does not apply to persons a person principally engaged in the business of cashing checks bona fide retail sale of goods or services if:

- (1) the transaction is incidental to the person, either incidental to or independent of a retail sale of goods or services, from time to time cashes checks; and
- (2) the consideration (as defined in section 3 of this chapter) charged for cashing checks does not exceed the greater of: (A) two percent (2%) of the face amount of the check; or (B) two five dollars (\$2): (\$5).

SECTION 63. IC 28-8-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13. Except in a transaction approved under section 13.1 of this chapter, a license is not transferable or assignable.

SECTION 64. IC 28-8-5-13.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13.1. (a) As used in this section, "control" means possession of the power directly or indirectly to:

- (1) direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or
- (2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change

C
O
P
Y



in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

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

- (1) in the discretion of the director for an additional thirty (30) days; and
- (2) not more than two (2) additional times for not more than forty-five (45) days each time if:

- (A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);
- (B) the director determines that any material information submitted is substantially inaccurate; or
- (C) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

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

- (1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.
- (2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the licensee. The report required by this section must be made not later than ten (10) days after the transfer

C
O
P
Y



of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 11 of this chapter, instead of acquiring control of the licensee under this section.

SECTION 65. IC 28-8-5-15, AS AMENDED BY P.L.35-2010, SECTION 187, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. (a) **To remain in force**, a license must be renewed for ~~twelve (12) months upon the~~ **not later than July 1 of each year, beginning with the year following the date of issuance, as set forth in section 14 of this chapter. A licensee may renew a license issued under this chapter by 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, a renewal application must be accompanied by:**

(1) the license renewal fee ~~as described in this section~~ **subsection (b); and**

(2) all information and documents requested by the director of the department. ~~must be filed with the renewal application. Each~~

(b) **A licensee that seeks to renew a license issued under this chapter 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:**

(1) **renewal license application; or**

(2) **renewal fee;**

~~that is not received before~~ **received by the department after July 1.**

SECTION 66. IC 28-8-5-22.5, AS AMENDED BY P.L.35-2010, SECTION 191, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 22.5. (a) A license issued by the department under this chapter ~~shall~~ **may be revoked or suspended by the department if the person fails to:**

(1) file any renewal applications prescribed by the director; or

(2) pay any license renewal fee described under section 15 of this chapter;

~~more not later~~ **than sixty (60) days after the date the renewal is due.**

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

(1) pay all delinquent fees and apply for ~~a new~~ **reinstatement of the person's** license; or

(2) appeal the revocation to the department for an administrative

C
O
P
Y

HEA 1528+



review under IC 4-21.5-3.

Pending the decision resulting from ~~the~~ a hearing under IC 4-21.5-3 concerning ~~the~~ license revocation ~~the or suspension~~, a license remains in force.

SECTION 67. IC 28-8-5-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 24. (a) **If the department determines, after notice and an opportunity 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 upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.**

(b) **In addition to or instead of imposing a civil penalty under subsection (a),** the department may bring a civil action against a person for violating this chapter.

~~(b)~~ (c) If the court finds that the defendant is guilty of ~~an offense under subsection (a);~~ **violating this chapter,** the court may assess a civil penalty not to exceed five thousand dollars (\$5,000) per violation.

~~(c)~~ (d) Civil penalties collected under this section shall be deposited into the financial institutions fund established by IC 28-11-2-9.

SECTION 68. IC 28-10-1-1, AS AMENDED BY P.L.35-2010, SECTION 192, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. A reference to a federal law or federal regulation in this title is a reference to the law or regulation **as in effect December 31, 2009: 2010.**

SECTION 69. IC 28-11-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. (a) The financial institutions fund is established.

(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the state general fund.

(c) All revenue accruing to the department shall be paid into the fund.

(d) All expenses incurred and all compensation paid by the department shall be paid out of the fund in the same manner as other state expenses and compensation are paid.

(e) Money in the fund at the end of a fiscal year does not revert to the state general fund.

(f) **All civil penalties assessed by the department shall be paid into the fund.**

(g) **If the department is required to defend the constitutionality of any of the statutes or rules the department administers, the costs**

C
O
P
Y



and expenses incurred in connection with the defense may not:

(1) be paid from the fund; or

(2) be assessed in any way to the department's budget.

SECTION 70. IC 28-11-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A final order issued under this chapter is effective: ~~at the expiration of~~

(1) on the date specified in the order; or

(2) ten (10) days after service of the order, if an effective date is not specified in the order.

~~However,~~ A final order issued upon consent under section 7(e) 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 71. IC 28-11-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. (a) A civil penalty imposed on a director or an officer under section 7 of this chapter may not exceed ~~fifteen~~ **one thousand dollars (\$1,000) per day** for each practice, violation, or act found to exist in the final order.

(b) In determining the amount of a civil penalty assessed under section 7 of this chapter, the following factors shall be considered:

- (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 act.
- (3) The history of previous practices, violations, or acts.
- (4) The economic benefit derived by the individual from the practice, violation, or act.
- (5) Other factors that justice requires.

(c) A financial institution may not indemnify a director or an officer for a civil penalty imposed under section 7 of this chapter.

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

SECTION 72. IC 28-14-5-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6.5. (a) A corporate fiduciary 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 subsection, a security is speculative or has speculative characteristics if at the time of purchase the security:

- (1) is rated below the first four (4) rating classes by a generally recognized security rating service; ~~or~~

C
O
P
Y



(2) is in default; **or**

(3) is otherwise considered speculative by the director.

(b) A corporate fiduciary may purchase for its own account a security that is not rated by a generally recognized security rating service if:

(1) the corporate fiduciary at the time of purchase obtains financial information that is adequate to document the investment quality of the security; **and**

(2) the security is not otherwise considered speculative by the director.

SECTION 73. IC 28-15-2-1, AS AMENDED BY P.L.57-2006, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Savings associations may do the following:

- (1) Accept deposit accounts.
- (2) Issue evidence of deposit account ownership.
- (3) Declare and distribute earnings to members.
- (4) Pay, in part or in full, withdrawal requests of deposit accounts.
- (5) Subject to the provisions and restrictions of 12 U.S.C. 84 and 12 CFR 32:

(A) Make loans to members on the security of deposit accounts.

(B) Make property improvement loans.

(C) Make other loans as provided under IC 28-15-8.

(D) Make mortgage loans.

(E) Accept additional collateral on mortgage loans.

(F) Purchase and sell loans.

(G) Negotiate loan servicing agreements.

(H) Purchase and sell participating interests in loans.

(I) Issue letters of credit with specific expiration dates.

(J) Make secured or unsecured loans, which are partially insured or guaranteed in any manner by any state of the United States, the United States government, or any of its agencies or government sponsored enterprises.

(K) Purchase commercial paper that is denominated in United States currency and **that:**

(i) is rated by at least one (1) nationally recognized investment rating service in one (1) of the two (2) highest grades; **or**

(ii) meets another standard of creditworthiness determined to be appropriate by the director.

(L) Make, purchase, or participate in alternative mortgage loans as provided in IC 28-15-11.

C
O
P
Y



- (6) Acquire and sell real estate in satisfaction of debts previously contracted.
- (7) Acquire real estate for the convenient transaction of its business. A savings association has the same powers under this subdivision as a bank or trust company has under IC 28-1-11-5.
- (8) Notwithstanding any other law, establish, maintain, or relocate one (1) or more branch offices by following the provisions of IC 28-2-13, IC 28-2-17, or IC 28-2-18 as if the savings association were a bank.
- (9) Become a member in any agency or instrumentality of the federal government. For the purposes of this subdivision, membership in an agency or instrumentality of the federal government may include:
 - (A) purchasing stock;
 - (B) purchasing notes and debentures; or
 - (C) borrowing money.
- (10) Subject to any limitations imposed by the department through policy:
 - (A) invest the money deposited in the savings association in the shares of the capital stock, bonds, debentures, notes, or other obligations of a federal home loan bank of the United States;
 - (B) become a member of the federal home loan bank of the district in which Indiana is located or an adjoining district;
 - (C) borrow money from:
 - (i) a federal home loan bank described in clause (B);
 - (ii) the Federal Deposit Insurance Corporation; or
 - (iii) any other corporation;
 - (D) transfer, assign to, and pledge with a federal home loan bank described in clause (B), the Federal Deposit Insurance Corporation, or any other corporation any of the bonds, notes, contracts, mortgages, securities, or other property of the savings association held or acquired as security for the payment of loans entered into under clause (C); and
 - (E) exercise all rights, powers, and privileges conferred upon, and do all things and perform all acts required of, members or shareholders of a federal home loan bank by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449).
- (11) Subject to the provisions and restrictions of 12 U.S.C. 24 and 12 CFR 1, invest in the following types of securities:
 - (A) Bonds, notes, certificates, and other valid obligations of the United States government or any agency of the United

C
O
P
Y



States government.

(B) Accounts offered by federally insured banks, savings banks, and savings associations.

(C) Bonds, notes, or other evidences of indebtedness that are general obligations supported by the full faith and credit of any state in the United States or any city, town, or other political subdivision in any state in the United States if the obligations:

- (i) have been assigned one (1) of the four (4) highest grades by a nationally recognized investment rating service; **or**
- (ii) meet another standard of creditworthiness determined to be appropriate by the director.**

(D) Shares of stock of a subsidiary that does not exercise a power or engage in any activity that is not authorized for the savings association. The investment power granted by this subdivision is separate from the investment power granted by IC 28-15-9.

(E) Corporate debt securities that are denominated in United States currency and **that:**

- (i) **are** rated by at least one (1) nationally recognized investment rating service in one (1) of the four (4) highest grades; **or**
- (ii) meet another standard of creditworthiness determined to be appropriate by the director.**

Corporate debt securities in which a savings association invests under this clause must be convertible into stock at the sole option of the holder, and a savings association is prohibited from exercising the conversion option.

(F) Shares of open end investment companies that are eligible for purchase by national banks.

(G) Bankers' acceptances that are eligible for purchase by national banks.

(12) For the purpose of:

- (A) check and deposit sorting and posting;
- (B) computation and posting of interest and other credits and charges;
- (C) preparation and mailing of checks, statements, notices, and similar items; or
- (D) other clerical, bookkeeping, accounting, statistical, or similar functions performed by a savings association;

invest in a corporation organized in any state to perform those functions for two (2) or more savings associations, each of which owns a portion of the capital stock of the corporation. The total

C
O
P
Y



investment of a savings association under this subdivision may not exceed ten percent (10%) of the capital and surplus of the savings association. A savings association may not invest in this type of corporation unless the corporation furnishes assurances to the department that it will subject itself to examination by the department to the same extent as if the services were performed by the savings association.

- (13) Lend money to other savings associations:
- (A) the deposits of which are insured by the Federal Deposit Insurance Corporation; and
 - (B) that are incorporated and operating under the laws of any state or of the United States.
- (14) Borrow money and mortgage or pledge its property to secure payment.
- (15) Issue subordinated notes or debentures.
- (16) Assess and collect interest, fees, and other charges.
- (17) Insure its deposit accounts with the Federal Deposit Insurance Corporation or its successor.
- (18) Act as an agent for the United States or its instrumentalities.
- (19) Accept property for safe keeping or escrow.
- (20) Rent or lease safe deposit boxes.
- (21) Issue and sell checks, drafts, money orders, and other instruments for the transmission or payment of money.
- (22) Exercise all the powers that:
- (A) are incidental and proper; or
 - (B) may be necessary and usual;
- in carrying on the business of the savings association.
- (23) Purchase or construct buildings, hold legal title to the buildings, and lease the buildings for public purposes to municipal corporations or other public authorities that have resources sufficient to make payment of all rentals as they become due. Each lease agreement entered into under this subdivision must provide that, upon expiration, the lessee will become the owner of the building.
- (24) Open or establish automated teller machines at any location. An automated teller machine opened or established under this subdivision may be owned and operated individually or jointly on a cost sharing or fee basis.
- (25) Act:
- (A) in any fiduciary capacity in which a bank or trust company is permitted to act under this title; and
 - (B) as an agent for the sale of real estate, without bond or other

C
O
P
Y



security.

(26) Accept and maintain demand deposit accounts if the savings association is insured by the Federal Deposit Insurance Corporation or its successor.

(27) Without the approval of the department, to the extent authorized by the board of directors of the savings association, establish or maintain agencies that:

(A) only service and originate, but do not approve, loans and contracts; or

(B) manage or sell real estate owned by the savings association.

An agency established or maintained under this subdivision may offer any services not referred to in this subdivision with the approval of the department, except for accepting payment on savings accounts. An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the savings association.

(b) Subject to any limitations or restrictions that the department may impose by rule or policy, a savings association 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 savings association's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the savings association'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 74. IC 28-15-11-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. As used in this chapter, "money cost index" means any of the following:

(1) The weekly net yield purchase quotations of conventional program home mortgages published by the Federal Home Loan Mortgage Corporation.

(2) The monthly national average mortgage rate index for all major lenders for the purchase of previously occupied single-family homes of the Office of Thrift Supervision or its successor.

(3) The average cost to savings associations of funds insured by the ~~Savings Association Insurance Fund of the~~ Federal Deposit

C
O
P
Y



Insurance Corporation, either for all Federal Home Loan Bank districts or for a particular district or districts, as computed semiannually and published by the Office of Thrift Supervision or its successor and made available in news releases.

(4) The monthly average of weekly auction rates on United States Treasury bills with a maturity of three (3) months or six (6) months, as published in the Federal Reserve Bulletin and made available by the Federal Reserve Board each month.

(5) The monthly average yield on United States Treasury securities adjusted to a constant maturity of one (1), two (2), three (3), or five (5) years, as published in the Federal Reserve Bulletin and made available by the Federal Reserve Board each month.

(6) Any rate that is designated by the department.

SECTION 75. IC 30-4-3-7, AS AMENDED BY P.L.226-2007, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) Unless the terms of the trust provide otherwise or the transaction is authorized under IC 28-1-12-8 or IC 28-6.1-6-26, the trustee has a duty:

- (1) not to loan funds to the trustee or an affiliate;
- (2) not to purchase or participate in the purchase of trust property from the trust for the trustee's own or an affiliate's account;
- (3) not to sell or participate in the sale of the trustee's own or an affiliate's property to the trust; or
- (4) if a corporate trustee, not to purchase for or retain in the trust its own or a parent or subsidiary corporation's stock, bonds, or other capital securities. However, the trustee may retain such securities already held in trusts created prior to September 2, 1971.

(b) Unless the terms of the trust provide otherwise, a corporate trustee may invest in, purchase for, or retain in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, without the investment, purchase, or retention constituting a conflict of interest under section 5 of this chapter.

(c) Unless the terms of the trust provide otherwise, a corporate trustee does not violate subsection (a) by investing in, purchasing for, or retaining in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, if the payment of each obligation is fully insured by ~~the Bank Insurance Fund or the Savings Association Insurance Fund~~ of the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or any insurer approved by the department of financial institutions under IC 28-7-1-31.5.

C
o
p
y

HEA 1528+



(d) If the terms of the trust permit the trustee to deal with a beneficiary for the trustee's own account, the trustee has a duty to deal fairly with and to disclose to the beneficiary all material facts related to the transaction which the trustee knows or should know.

(e) Unless the terms of the trust provide otherwise, the trustee may sell, exchange, or participate in the sale or exchange of trust property from one (1) trust to the trustee as trustee of another trust, provided the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts and the trustee discloses to the beneficiaries of both trusts all material facts related to the sale or exchange which the trustee knows or should know.

(f) This section does not prohibit a trustee from enforcing or fulfilling any enforceable contract or agreement:

- (1) executed during the settlor's lifetime; and
- (2) between the settlor and the trustee in the trustee's individual capacity.

SECTION 76. IC 32-30-10.5-5, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As used in this chapter, "mortgage" means:

- (1) a loan; or
- (2) a consumer credit sale;

in which a first mortgage, or a land contract that constitutes a first 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 and that is secured by a mortgage (or another equivalent consensual security interest) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(b) The term does not include a land contract (as defined in IC 24-4.4-1-301(36)).

SECTION 77. IC 33-44-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. "Depository financial institution" means a bank, a bank or trust company, a credit union, an industrial loan and investment company, a savings bank, or a savings association, whether chartered, incorporated, licensed, or organized under Indiana law or the law of the United States that:

- (1) does business in Indiana; and
- (2) is insured by the Federal Deposit Insurance Corporation, ~~the Savings Association Insurance Fund~~, the National Credit Union Administration, or an alternate share insurer.

SECTION 78. THE FOLLOWING ARE REPEALED [EFFECTIVE

C
O
P
Y



JULY 1, 2011]: IC 28-2-17-20.1; IC 28-2-18-29; IC 28-7-1-10.5;
IC 28-8-4-40; IC 28-8-5-5.

SECTION 79. An emergency is declared for this act.

**C
o
p
y**

HEA 1528+



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

C
O
P
Y

HEA 1528+

